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TITLE 20

PUBLIC HEALTH AND WELFARE

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SUBTITLE 1. GENERAL PROVISIONS

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ARKANSAS MINORITY HEALTH COMMISSION

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20-2-102. Creation — Members — Compensation.

(a) There is established the Arkansas Minority Health Commission to consist of twelve (12) members to be appointed as follows:

(1) Six (6) members of the general public to be appointed by the Governor, with each of the four (4) congressional districts represented;

(2) Three (3) members to be appointed by the President Pro Tempore of the Senate; and

(3) Three (3) members to be appointed by the Speaker of the House of Representatives.

(b) All persons appointed to the commission shall be persons who have actively participated in health issues for minorities or have special knowledge or experience with minority health issues.

(c) The members shall serve staggered two-year terms.

(d)(1) The commission shall meet at least quarterly and at such other times as necessary to carry out its duties under this chapter.

(2) The commission shall elect one (1) of its members as chair and may provide by appropriate adoption of bylaws and rules for the time, place, and manner of calling its meetings.

(e) Any state agency, state-supported hospital, or state medical school shall submit to the commission any information the commission requests that relates to health issues for minorities except for names, addresses, telephone numbers, or any other identifying information.

History. Acts 1991, No. 912, §§ 2, 4, 5; 1997, No. 250, § 176; 2001, No. 1288, § 15; 2007, No. 827, § 144; 2009, No. 574, § 1.

Amendments. The 2007 amendment deleted (e).

The 2009 amendment deleted (a)(4) through (a)(7), (e), and (f) and redesignated accordingly; and in (a), substituted "Six (6) members" for "Four (4)" in (a)(1), and substituted "Three (3)" for "Two (2)" in (a)(2) and (a)(3).

20-2-103. Powers and duties generally.

(a) The Arkansas Minority Health Commission shall:

(1) Establish the commission as the comprehensive agency in this state for:

(A) Gathering and analyzing information regarding disparities in health and health care and access to health and health care services in this state;

(B) Statewide educational programming regarding disparities in health and health care and equity to health and health care services; and

(C) Coordinating events regarding disparities in health and health care and access to health and health care services;

(2)(A) Actively seek out and develop partnerships and collaboration with other appropriate organizations to advance the understanding of and access to programs to remediate disparities in health and health care and access to health and health care services in this state.

(B) The following health and health care related state agencies and divisions of state agencies shall collaborate with the commission to achieve health care equity in the State of Arkansas:

(i) The Department of Health;

(ii) The Department of Human Services;

(iii) The Arkansas Department of Environmental Quality;

(iv) The Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences; and

(v) The Arkansas Center for Health Improvement.

(C) Partnerships developed by the commission shall connect all experts, agencies, and organizations concerned with minority health issues and minority health events;

(3) Address and make specific recommendations relating to public policy issues involving disparities in health and health care and equity to health and health care services for minorities to appropriate agencies, the General Assembly, and the Governor;

(4) Promote public awareness and public education encouraging Arkansans to live healthy lifestyles through awareness of various health and health care issues with an emphasis on factors that disproportionately affect the minority population in this state;

(5) Make recommendations to the relevant agencies, to the Governor, and to the General Assembly for improving the delivery of and access to health services for minorities;

(6) Gather and analyze information and make recommendations as to whether adequate services are available to ensure that future minority health needs will be met;

(7)(A) Develop, implement, maintain, and disseminate a comprehensive survey of racial and ethnic minority disparities in health and health care.

(B) The commission shall repeat the study every five (5) years to include without limitation disparities arising from geographic location and economic conditions; and

(8) Publish evidence-based data, define state goals and objectives, and develop pilot projects for decreasing disparities under subdivision (a)(7)(A) of this section.

(b) The commission shall report two (2) times each year to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

History. Acts 1991, No. 912, § 3; 2009, No. 358, § 1; 2009, No. 574, § 1.

Amendments. The 2009 amendment by No. 358 added (5) and (6) and made related changes.

The 2009 amendment by No. 574 rewrote the section.

20-2-104. Reimbursement for expenses.

(a) Members of the Arkansas Minority Health Commission shall serve without pay, but those members not employed by the State of Arkansas may receive expense reimbursement in accordance with § 25-16-901 et seq.

(b) The commission may authorize expense reimbursement for its members performing official duties of the commission by a majority vote of its total membership cast at its first regularly scheduled meeting of each calendar year.

(c) Any expense reimbursement shall not exceed the rate established for state employees in the state travel regulations.

History. Acts 1995, No. 1017, § 3; 1997, No. 250, § 177; 2003, No. 229, § 3; 2007, No. 827, § 145.

Amendments. The 2007 amendment inserted "shall serve without pay, but those members not employed by the State of Arkansas" in (a).

20-2-107. Report on health disparities.

On or before October 1 each year, the Arkansas Minority Health Commission shall report to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the chair of the House Committee on Public Health, Welfare, and Labor, and the chair of the Senate Committee on Public Health, Welfare, and Labor without limitation:

(1) Summarizing the previous year's work under § 20-2-103(a)(5) and (6);

(2) Describing reductions in disparities in health and health care in this state; and

(3) Outlining plans for continuing and expanding in the coming year the program to reduce disparities in health and health care in this state.

History. Acts 2009, No. 358, § 2.

SUBTITLE 2. HEALTH AND SAFETY

CHAPTER 7

STATE BOARD OF HEALTH — DEPARTMENT OF HEALTH

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Effective Dates. Acts 2007, No. 384, § 11: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many services delivered by the various divisions, offices, and units the Department of Health and Human Services are essential to the public health, safety, and welfare; that the state fiscal year begins July 1; that beginning the process of decoupling the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services during a fiscal year will cause disruptions of services and unnecessary time, effort, and expense in reallocating appropriations, budgets, personnel, equipment, and capital expenditures during a fiscal year; and that this act is immediately necessary because a delay beyond the beginning of the fiscal year will disrupt essential programs and services. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-7-102. Members — Appointment.

(a) The State Board of Health shall consist of the following members, to be appointed by the Governor as follows:

(1)(A) Seven (7) members of the board shall be licensed medical doctors of good professional standing, to be appointed by the Governor as follows:

(i) One (1) member shall be appointed from each of the four (4) congressional districts of this state as established by § 7-2-101 et seq.; and

(ii) Three (3) members shall be appointed from the state at large from a list of not fewer than three (3) names presented for each position by the Arkansas Medical Society.

(B) Notwithstanding the provisions of subdivision (a)(1)(A) of this section, at least one (1) of the positions allocated for licensed medical doctors shall be an osteopathic physician appointed from a list of not fewer than three (3) names presented to the Governor by the Arkansas Osteopathic Medical Association from the state at large;

(2) One (1) member shall be a regularly licensed, registered, and practicing dentist who has at least seven (7) years' experience in the practice of his or her profession in this state. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas State Dental Association;

(3) One (1) member shall be a professional engineer as defined in § 17-30-101 who has at least seven (7) years' experience in the practice of his or her profession in this state. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Society of Professional Engineers;

(4) One (1) member shall be a regularly licensed professional nurse who has been a resident of the state for at least seven (7) years preceding the appointment and who has at least a bachelor's degree and five (5) years' nursing experience in the state. This member shall be

appointed from a list of not more than three (3) names presented by the Arkansas Nurses Association;

(5) One (1) member shall be a regularly licensed pharmacist who has been actively engaged in the practice of pharmacy for at least seven (7) years preceding his or her appointment. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Pharmacists Association;

(6) One (1) member shall be a regularly licensed veterinarian who has been actively engaged in the practice of veterinary medicine for at least seven (7) years preceding his or her appointment. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Veterinary Medical Association;

(7) One (1) member shall be a registered sanitarian who has at least seven (7) years' experience in the practice of his or her profession preceding his or her appointment. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas State Board of Sanitarians;

(8) One (1) member shall be a hospital administrator who has at least seven (7) years' experience in the practice of his or her profession in Arkansas. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Hospital Association;

(9) One (1) member shall be a regularly licensed, registered, and practicing optometrist who has at least seven (7) years' experience in the practice of his or her profession in this state. This member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Optometric Association;

(10) One (1) member shall be a regularly licensed and practicing chiropractor. This member shall be appointed from a list of not fewer than three (3) names submitted by the Arkansas Chiropractic Association or the Arkansas Chiropractic Society;

(11) One (1) member shall be a restaurant operator who has owned or operated a restaurant for a minimum of five (5) years. This member shall be appointed by the Governor from a list of three (3) names submitted by the Arkansas Hospitality Association;

(12) One (1) member shall be a consumer representative who has an interest in public health. This member shall be appointed by the Governor from the state at large;

(13) One (1) member shall be more than sixty (60) years old and represent the elderly. This person shall not be actively engaged in or retired from any occupation, profession, or industry to be regulated by the board. The member shall be appointed by the Governor from the state at large and be subject to confirmation by the Senate;

(14) One (1) member shall be a licensed doctor of podiatric medicine of good professional standing who has at least seven (7) years' experience in the practice of the profession in this state. The member shall be appointed from a list of not fewer than three (3) names presented by the Arkansas Podiatric Medical Association;

(15) One (1) member shall be a member of the Arkansas Public Health Association. The member shall be appointed by the Governor

from a list of three (3) names submitted by the Arkansas Public Health Association;

(16) One (1) member shall be a licensed medical doctor of good professional standing who shall be appointed from a rural county that contains a medically underserved population in the state; and

(17) One (1) member shall be the Director of the Department of Health.

(b) Each of the members of the board so appointed shall take the oath prescribed by the Arkansas Constitution for state officers and shall be commissioned by the Governor in the same manner as other state officials.

History. Acts 1913, No. 96, §§ 1, 2; C. & M. Dig., §§ 5125, 5126; Acts 1929, No. 109, § 1; Pope's Dig., §§ 6388, 6389; Acts 1949, No. 302, §§ 1, 2; 1959, No. 186, §§ 1, 2; 1961, No. 433, § 1; 1963, No. 240, § 1; 1971, No. 204, § 1; 1975, No. 295, § 1; 1977, No. 318, § 1; 1979, No. 198, § 1; 1981, No. 713, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 82-101, 82-103; Acts 1987, No. 112, § 1; 1991, No. 829, § 1; 1995, No. 747, § 1; 2003, No. 1450, § 1; 2005, No. 1954, § 5; 2007, No. 384, § 4; 2011, No. 897, § 15.

A.C.R.C. Notes. Acts 2007, No. 384, § 1, provided: "Creation of the Department of Health.

"(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

"(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

"(1) 'Division of Health of the Department of Health and Human Services' or 'Division of Health' with 'Department of Health'; and

"(2) 'Department of Health and Human Services' with 'Department of Human Services'.

"(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section."

Acts 2007, No. 384, § 2, provided: "Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

"(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

"(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

"(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

"(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

"(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

"(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103."

Subdivision (a)(17) was changed to reflect the split of the former Department of Health and Human Services to form the Department of Health and the Department of Human Services.

Acts 2007, No. 384, § 3, provided: "Transfer of the State Board of Health to the Department of Health.

"(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

"(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rule-making authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

"(1) Rule making, licensing, and registration;

"(2) The promulgation of rules, rates, and standards;

"(3) Examining, investigating, inspecting, and reviewing; and

"(4) The rendering of findings, orders, and adjudications."

Amendments. The 2007 amendment substituted "the following" for "twenty-three (23)" in (a), and substituted "One (1) member shall be the Director of the Department of Health or the Director of the Division of Health of the Department of Health and Human Services" for "One (1) member shall be the Director of the Department of Health and Human Services or his or her designee" in (a)(17).

The 2011 amendment substituted "a professional engineer as defined in § 17-30-101" for "a registered professional engineer" in (a)(3).

20-7-103. Members — Officers.

(a) The members of the State Board of Health shall elect one (1) of the members as president. However, the Director of the Department of Health shall not serve as the President of the State Board of Health.

(b)(1) With approval of the board the Governor may appoint a Surgeon General for the State of Arkansas who shall not be a current sitting member of the board and who shall:

(A) Be a graduate of a legally constituted and reputable medical college;

(B) Be of good standing;

(C) Have all the powers of the members of the board; and

(D) Serve as a cabinet level advisor to the Governor.

(2) The Surgeon General shall perform such duties as may be required of him or her by the Governor or the board, or both, including, but not limited to:

(A) Reviewing, assessing, and developing health policy options, including insurance coverage, health risk management, disease prevention, and health promotion strategies across state agencies;

(B) Providing policy options for the Governor and senior state agency officials;

(C) Raising awareness of health care and public health areas of priority for advancement of the state population's health;

(D) Reviewing legislative analyses and proposed legislation and creating position statements for the Governor and senior state agency officials;

(E) Advising the Governor, senior state agency officials, and governing boards and commissions on policy issues and program accomplishments; and

(F) Providing medical review oversight and guidance to health and human services clinical programs upon request.

History. Acts 1913, No. 96, § 2; C. & M. Dig., § 5126; Acts 1929, No. 109, § 1; Pope's Dig., § 6389; Acts 1949, No. 302, § 2; 1959, No. 186, § 2; 1979, No. 198, § 1; A.S.A. 1947, § 82-103; Acts 2005, No. 1954, § 5; 2007, No. 384, § 4.

A.C.R.C. Notes. Acts 2007, No. 384, § 1, provided: "Creation of the Department of Health.

"(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

"(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

"(1) 'Division of Health of the Department of Health and Human Services' or 'Division of Health' with 'Department of Health'; and

"(2) 'Department of Health and Human Services' with 'Department of Human Services'.

"(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section."

Acts 2007, No. 384, § 2, provided: "Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

"(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

"(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

"(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

"(3) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

"(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

"(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103."

Subdivision (a) was changed to reflect the split of the former Department of Health and Human Services to form the Department of Health and the Department of Human Services.

Acts 2007, No. 384, § 3, provided: "Transfer of the State Board of Health to the Department of Health.

"(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

"(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rulemaking authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

"(1) Rule making, licensing, and registration;

"(2) The promulgation of rules, rates, and standards;

"(3) Examining, investigating, inspecting, and reviewing; and

"(4) The rendering of findings, orders, and adjudications."

Amendments. The 2007 amendment,

in (a), inserted "Director of the Department of Health or the Director of the Division of Health of the" and deleted "or his or her designee on the board" following "Services"; in (b)(1), substituted "may" for "shall" and substituted "Surgeon General" for "Chief Health Officer"; added (b)(1)(D) and made a minor stylistic change; in (b)(2), substituted "Surgeon General" for "Chief Health Officer shall also be knkown as the Secretary of the State Board of Health and" and substituted "Governor or the board, or both" for "board or by this subchapter"; and rewrote (b)(2)(A) through (b)(2)(F).

20-7-105. Proceedings.

(a)(1) The State Board of Health shall meet at least one (1) time every three (3) months.

(2) Upon the call of the President of the State Board of Health or a majority of the members of the board, the board shall meet at such other times as may be necessary in the interest of public health.

(b)(1) The board may adopt bylaws regulating the transaction of its business and provide within the bylaws for the appointment of committees to which the board may delegate authority and power for all duties committed to the board, but under the direction and subject to the control of the board.

(2) The board may also adopt and use an official seal.

(c) A majority of the members of the board shall constitute a quorum for the transaction of business and for the performance of such duties as the board may prescribe.

History. Acts 1913, No. 96, §§ 3, 4; C. & M. Dig., §§ 5127, 5128; Acts 1929, No. 109, § 2; Pope's Dig., §§ 6390, 6399; A.S.A. 1947, §§ 82-107, 82-108; Acts 2005, No. 1954, § 5; 2007, No. 384, § 5.

A.C.R.C. Notes.

Acts 2007, No. 384, § 1, provided:

"Creation of the Department of Health.

"(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

"(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

"(1) 'Division of Health of the Department of Health and Human Services' or 'Division of Health' with 'Department of Health'; and

"(2) 'Department of Health and Human Services' with 'Department of Human Services'.

"(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section."

Acts 2007, No. 384, § 2, provided:

"Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

"(a) Effective sixty (60) days after the Governor establishes the Department of Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

"(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

"(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

"(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the ren-

dering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

"(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

"(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103."

Acts 2007, No. 384, § 3, provided:

"Transfer of the State Board of Health to the Department of Health.

"(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

"(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rulemaking authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

"(1) Rule making, licensing, and registration;

"(2) The promulgation of rules, rates, and standards;

"(3) Examining, investigating, inspecting, and reviewing; and

"(4) The rendering of findings, orders, and adjudications."

Amendments. The 2007 amendment added (a)(1) and (a)(2) designations and made minor stylistic changes; and in (a)(2), deleted "the Director of the Department of Health and Human Services" following "Health" and inserted "the board" preceding "shall."

20-7-106. Office.

The office of the State Board of Health shall be located in Little Rock, and the board shall be furnished with all necessary equipment and supplies, including laboratory supplies, books, stationery, blanks, furniture, etc., as are provided other officers of the state and as are necessary for carrying on the work of the board, and the office is to be provided in a suitable building to be designated by the Director of the Department of Health.

History. Acts 1913, No. 96, § 24; C. & M. Dig., § 5139; Pope's Dig., § 6410; A.S.A. 1947, § 82-102; Acts 2005, No. 1954, § 5; 2007, No. 384, § 6.

A.C.R.C. Notes.

Acts 2007, No. 384, § 1, provided:

"Creation of the Department of Health.

"(a) There is created the Department of Health, that is to be established if the Governor orders the separation of the Division of Health of the Department of Health and Human Services from the Department of Health and Human Services.

"(b) If the Governor establishes the Department of Health under subsection (a) of this section, the Arkansas Code Revision Commission shall replace all references in the Arkansas Code to the:

"(1) 'Division of Health of the Department of Health and Human Services' or 'Division of Health' with 'Department of Health'; and

"(2) 'Department of Health and Human Services' with 'Department of Human Services'.

"(c) Sections 2 through 12 of this act become effective only if the Governor establishes the Department of Health under subsection (a) of this section."

Acts 2007, No. 384, § 2, provided:

"Transfer of the Division of Health of the Department of Health and Human Services out of the Department of Health and Human Services.

"(a) Effective sixty (60) days after the Governor establishes the Department of

Health under this act, and as provided in the orders of the Governor, the following may be transferred to the Department of Health:

"(1) Authority, powers, duties, and functions as established by law for the Division of Health of the Department of Health and Human Services, including purchasing, budgeting, fiscal, accounting, human resources, payroll, legal, information systems, maintenance, program support, administrative support, and other management functions;

"(2) Records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Division of Health of the Department of Health and Human Services;

"(3) Rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications as established by law for the Division of Health of the Department of Health and Human Services, except as otherwise specified in this act.

"(b) Powers, duties, and functions, including without limitation, rulemaking, regulation, and licensing, promulgation of rules, rates, regulations, and standards, budgetary responsibilities, and the rendering of findings, orders, and adjudications as established by law for the Breast Cancer Control Program or other transferred entities within the Division of Health of the Department of Health and Human Services shall be retained as they existed on June 30, 2005.

"(c) The Governor may appoint a Surgeon General in accordance with § 20-7-103."

The text of this section was changed to reflect the split of the former Department of Health and Human Services to form the Department of Health and the Department of Human Services.

Acts 2007, No. 384, § 3, provided:

"Transfer of the State Board of Health to the Department of Health.

"(a) Effective sixty (60) days after the Department of Health is established, the State Board of Health shall be transferred to the Department of Health.

"(b) The State Board of Health shall receive administrative support from the Department of Health and shall retain the same powers, authorities, duties, and functions prescribed by law as it had before the transfer and shall have all rulemaking authority prescribed by law to the Division of Health of the Department of Health and Human Services before the transfer, except as provided for in this act, including, without limitation:

"(1) Rule making, licensing, and registration;

"(2) The promulgation of rules, rates, and standards;

"(3) Examining, investigating, inspecting, and reviewing; and

"(4) The rendering of findings, orders, and adjudications."

Amendments. The 2007 amendment substituted "Director of the Department of Health or the Director of the Division of Health of the Department of Health and Human Services" for "Governor."

20-7-116. [Repealed.]

Publisher's Notes. This section, concerning perinatal health, was repealed by Acts 2009, No. 952, § 1. The section was derived from Acts 1979, No. 159, §§ 1-5; 1979, No. 723, § 3; A.S.A. 1947, §§ 5-911.1 — 5-911.5.

20-7-117. Hospices.

(a) There is created within the Department of Health a State Hospice Office to be administered in a division of the department to be designated by the Director of the Department of Health.

(b)(1) The office shall:

(A) Coordinate the care of terminally ill persons with all existing agencies, programs, and facilities;

(B) Implement rules, regulations, and standards for hospice care in general agreement with guidelines of the National Hospice and

Palliative Care Organization and the Arkansas State Hospice Association and in compliance with the Centers for Medicare & Medicaid Services;

(C) Provide technical assistance and information to developing hospices;

(D) Maintain a central storehouse of information and reference materials relating to the hospice concept and disseminate this to programs and individuals on request in an equitable manner and accept and respond to inquiries relating to hospice; and

(E) Assist the Arkansas State Hospice Association in developing the hospice concept in this state and networking hospice programs with existing medical communities and human service facilities.

(2) All functions and duties of the office shall be carried out in accordance with the laws of Arkansas and the regulations of the Health Services Permit Agency, the Health Services Permit Commission, and the Centers for Medicare & Medicaid Services.

(c)(1) The regulations and requirements of the Health Services Permit Agency and the Health Services Permit Commission shall be revised to include separate permit-of-approval categories of health care facilities entitled "hospice facilities" and "hospice agencies" and to develop criteria for granting the permits of approval for hospice facilities and for hospice agencies for which applications shall be filed in accordance with the criteria.

(2) A hospice facility or hospice agency shall not convert its licensure to any other license.

(d) As used in this section, "hospice" or "hospice program" means an autonomous, centrally administered, medically directed, coordinated program providing a continuum of home, outpatient, and homelike inpatient care for the terminally ill patient and the patient's family, and which employs an interdisciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social, and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty-four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of ability to pay.

(e) The licensure fee for a hospice shall be an annual fee of five hundred dollars ($500).

History. Acts 1983, No. 283, §§ 1-4; A.S.A. 1947, §§ 5-911.6 — 5-911.9; Acts 1997, No. 396, §§ 1, 2; 1997, No. 574, § 3; 2001, No. 1800, §§ 4, 5; 2007, No. 827, § 146.

Amendments. The 2007 amendment deleted "after March 7, 1997, provided that those entities that have filed written intent to build a hospice facility or to operate a hospice agency with both the Health Services Permit Agency and the division prior to March 7, 1997, shall have thirty-six (36) months to complete the project and be licensed" at the end of (c)(1).

20-7-123. Fees.

(a) All revenue derived from fees collected pursuant to this section shall be deposited as special revenues into the State Treasury, where they shall be credited to the Public Health Fund.

(b) These fees are as follows:

(1) All fees prescribed in the Vital Statistics Act, § 20-18-101 et seq., which are as follows:

(A) A fee of fifteen dollars ($15.00) collected by the State Registrar of Vital Records for the filing of a delayed certificate of birth;

(B) A fee of fifteen dollars ($15.00) collected by the state registrar for the filing of a delayed certificate of death or marriage;

(C) A fee of fifteen dollars ($15.00) collected by the state registrar for issuing a new certificate of birth for a person who has been legitimated, or whose paternity has been determined, or whose name has been changed;

(D)(i) A fee of one dollar ($1.00) collected by the clerks of the county courts upon the application of any person for marriage.

(ii) This fee is in addition to any other fees;

(E)(i) Except as provided in subdivision (b)(1)(G)(ii) of this section, a fee of fifteen dollars ($15.00) collected by the state registrar for the amendment of any record.

(ii) For a hospital that requests an amendment of a record, a fee of two dollars ($2.00);

(F) A fee of five dollars ($5.00) collected by the state registrar for the making and certification of any certificate or record other than a death certificate;

(G)(i) A fee of four dollars ($4.00) collected by the state registrar for the making and certification of a single copy of a death certificate; and

(ii) A fee of one dollar ($1.00) collected for the making and certification of each additional copy of a death certificate;

(H)(i) A fee of five dollars ($5.00) collected by the state registrar for an examination and search of the files for any birth, marriage, divorce, or putative father record.

(ii) A fee of four dollars ($4.00) for an examination and search of the files for a death record.

(iii) The fees set out in this subdivision (b)(1)(H) shall be paid prior to searching the record; and

(I) A fee of five dollars ($5.00) collected by the state registrar for establishing a new certificate of birth under § 20-18-406;

(2)(A) A fee to be collected for the review of plans and specifications covering improvements that by law or regulation are required to be reviewed by the State Board of Health or Department of Health, including without limitation, plans and specifications covering waterworks, sewage works, swimming pools, hospitals and related facilities, food service and food processing establishments, and plumbing in public facilities.

(B) The fee imposed under subdivision (b)(2)(A) of this section shall be one percent (1%) of the estimated cost, with a maximum fee

of five hundred dollars ($500) and a minimum fee of fifty dollars ($50.00), calculated and paid on the basis of the engineering estimate of the total cost of the particular improvement, which estimate is to be submitted with the plans and specifications for review.

(C) If the maximum fee of five hundred dollars ($500) is paid, no engineering estimate of the total cost need be submitted with the plans and specifications; and

(3) A fee of fifty dollars ($50.00) to be collected by the board or the department for each cemetery inspection as required by law or regulation.

History. Acts 1965, No. 469, § 10; 1983, No. 378, § 2; 1985, No. 351, §§ 1, 4; A.S.A. 1947, §§ 82-130, 82-130.1; Acts 1987, No. 399, §§ 1, 2; 1993, No. 350, § 6; 1993, No. 403, § 11; 1995, No. 270, § 14; 1995, No. 1254, § 29; 1995, No. 1256, § 20; 1995 (1st Ex. Sess.), No. 13, § 4; 2001, No. 957, §§ 1-4; 2003, No. 1723, § 14; 2007, No. 827, § 147; 2007, No. 1059, § 1.

A.C.R.C. Notes. Pursuant to Acts 2007, No. 827, § 240, the amendment of § 20-7-123 by Acts 2007, No. 1059, § 1 supersedes the amendment of § 20-7-123 by Acts 2007, No. 827, § 147.

Amendments. The 2007 amendment by No. 1059, in (b)(1), deleted former (C), (F), (H)(ii), and (L), and redesignated the remaining subdivisions accordingly, substituted "fifteen dollars ($15.00)" for "two dollars and fifty cents ($2.50)" in (A); substituted "fifteen dollars ($15.00)" for "two dollars and fifty cents ($2.50)" in (B); substituted "fifteen dollars ($15.00)" for "five dollars ($5.00)" in (C); substituted "Except as provided in subdivision (G)(iii) of this section, a fee of fifteen dollars ($15.00)" for "A fee of two dollars ($2.00)" in present (E)(i); added present (E)(ii); substituted "five dollars ($5.00)" for "eight dollars ($8.00)" in present (F), in present (G), substituted "Four dollars ($4.00)" for "eight dollars ($8.00)" in (i) and "One dollar ($1.00)" for "A fee of three dollars ($3.00)" in (ii); substituted "five dollars ($5.00)" for "eight dollars ($8.00)" in present (H)(i), and made related changes.

20-7-133. Child Health Advisory Committee — Creation.

(a) There is created a Child Health Advisory Committee to consist of twenty (20) members.

(b)(1) The Director of the Department of Health shall appoint:

(A) One (1) member to represent the Department of Health;

(B) One (1) member to represent the Arkansas Dietetic Association;

(C) One (1) member to represent the American Academy of Pediatrics, Arkansas Chapter;

(D) One (1) member to represent the Arkansas Academy of Family Practice;

(E) One (1) member to represent the Arkansas Association for Health, Physical Education, Recreation and Dance;

(F) One (1) member to represent jointly the Arkansas Heart Association, the American Cancer Society, and the American Lung Association;

(G) One (1) member to represent the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences;

(H) One (1) member to represent the Arkansas Center for Health Improvement;

(I) One (1) member to represent the Arkansas Advocates for Children and Families;

(J) One (1) member to represent the University of Arkansas Cooperative Extension Service; and

(K) One (1) member to represent the Office of Minority Health and Health Disparities of the Department of Health.

(2) The Commissioner of Education shall appoint:

(A) One (1) member to represent the Department of Education;

(B) One (1) member to represent the Arkansas School Food Service Association;

(C) One (1) member to represent the Arkansas School Nurses Association;

(D) One (1) member to represent the Arkansas Association of Educational Administrators;

(E) One (1) member to represent the Arkansas Parent Teacher Association;

(F) One (1) member to represent the Arkansas School Boards Association;

(G) One (1) member to represent the Arkansas Association of School Business Officials;

(H) One (1) member to represent the Arkansas Association for Supervision and Curriculum Development; and

(I) One (1) member who is a classroom teacher.

(c) Terms of committee members shall be three (3) years except for the initial members, whose terms shall be determined by lot so as to stagger terms to equalize as nearly as possible the number of members to be appointed each year.

(d) If a vacancy occurs, the officer who made the original appointment shall appoint a person who represents the same constituency as the member being replaced.

(e) The committee shall elect one (1) of its members to act as chair for a term of one (1) year.

(f) A majority of the members shall constitute a quorum for the transaction of business.

(g) The committee shall meet at least monthly.

(h) The division shall provide office space and staff for the committee.

(i) Members of the committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902 if funds are available.

History. Acts 2003, No. 1220, § 1; 2007, No. 719, § 1.

Amendments. The 2007 amendment substituted "twenty (20)" for "fifteen (15)" in (a); added (b)(1)(K) and (b)(2)(F) through (b)(2)(I); and made related changes.

20-7-134. Powers and duties.

(a) The Child Health Advisory Committee shall meet at least one (1) time per month and make recommendations to the State Board of Education and the State Board of Health consistent with the intent and purpose of this section, §§ 20-7-133 and 20-7-135.

(b) The committee shall develop nutrition and physical activity standards and policy recommendations with consideration of the following:

(1) Foods sold individually in school cafeterias but outside the regulated National School Lunch Program;

(2) Competitive foods as defined by the United States Department of Agriculture as the definition is in existence on January 1, 2003, and offered at schools typically through vending machines, student stores, school fundraisers, food carts, or food concessions;

(3) The continuing professional development of food service staff;

(4) The expenditure of funds derived from competitive food and beverage contracts;

(5) Physical education and activity;

(6) Systems to ensure the implementation of nutrition and physical activity standards; and

(7) The monitoring and evaluating of results and reporting of outcomes.

(c) The committee shall examine the progress of the Arkansas Coordinated School Health Program and make recommendations to the Department of Education and the Department of Health concerning the implementation of the Arkansas Coordinated School Health Program.

History. Acts 2003, No. 1220, § 1; 2007, No. 719, § 1.

Amendments. The 2007 amendment added (c).

20-7-135. Nutrition and physical activity standards — Implementation.

(a) After having consulted the Child Health Advisory Committee and the State Board of Health, the State Board of Education shall promulgate appropriate rules and regulations to ensure that nutrition and physical activity standards and body mass index for age assessment protocols are implemented to provide students with the skills, opportunities, and encouragement to adopt healthy lifestyles.

(b) The Department of Health in consultation with the Department of Education shall:

(1) Employ one (1) qualified community health promotion professional with training or experience, or both, in nutrition, chronic disease, or another related field to be housed within the division to plan, develop, implement, and evaluate pilot or model programs to support schools and communities if funds are available;

(2) Employ one (1) statewide health promotion consultant to be housed within the Department of Education if funds are available;

(3) Employ one (1) person as a community health promotion specialist to support implementation of pilot or model programs in schools and communities in nutrition and physical activity in several distinct geographical areas of the state if funds are available;

(4) Assign all community health nurses under its supervision to work with schools to assure that body mass index for age assessment protocols are followed by school employees or their designees who conduct body mass index for age assessments and other student health screenings; and

(5) Not use more than five percent (5%) of the annual Department of Health Master Settlement Agreement funds for the salaries or programs created under this subsection.

(c) Every school district shall:

(1) Prohibit for elementary school students in-school access to vending machines offering food and beverages;

(2) Require schools to include as part of the annual report to parents and the community the amounts and specific sources of funds received and expenditures made from competitive food and beverage contracts;

(3) Beginning with kindergarten and then in even-numbered grades, require schools to include as a part of a student health report to parents a body mass index percentile by age for each student; and

(4)(A) Permit any parent to refuse to have his or her child's body mass index percentile for age assessed and reported, by providing a written refusal to the school.

(B) Students in grades eleven through twelve (11-12) are exempt from any policy or requirement of a public school or the state for measuring or reporting body mass index.

(d) The Department of Education shall:

(1) Begin the implementation of standards developed by the committee and approved by the Department of Education; and

(2) Annually monitor and evaluate the implementation and effectiveness of the nutrition and physical education standards.

(e) Every school district shall:

(1) Convene a school nutrition and physical activity advisory committee that shall include members from school district governing boards, school administrators, food service personnel, teacher organizations, parents, students, and professional groups such as nurses and community members to:

(A) Help raise awareness of the importance of nutrition and physical activity; and

(B) Assist in the development of local policies that address issues and goals, including, but not limited to, the following:

(i) Assisting with the implementation of nutrition and physical activity standards developed by the school nutrition and physical activity advisory committee with the approval of the Department of Education and the State Board of Health;

(ii) Integrating nutrition and physical activity into the overall curriculum;

(iii) Ensuring that professional development for staff includes nutrition and physical activity issues;

(iv) Ensuring that students receive nutrition education and engage in healthful levels of vigorous physical activity;

(v) Improving the quality of physical education curricula and increasing training of physical education teachers;

(vi) Enforcing existing physical education requirements; and

(vii) Pursuing contracts that both encourage healthy eating by students and reduce school dependence on profits from the sale of foods of minimal nutritional value;

(2) Begin the implementation of standards developed by the committee with the approval of the Department of Education and the State Board of Health; and

(3) Require that goals and objectives for nutrition and physical activity be incorporated into the annual school planning and reporting process.

(f)(1) The Department of Education and the Department of Health shall report annually on progress in implementing nutrition and physical education standards to the chairs of the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor, the House Interim Committee on Education, and the Senate Interim Committee on Education.

(2) The State Board of Education shall submit to the House Interim Committee on Education and the Senate Interim Committee on Education for the committees' review any proposed rules regarding physical education or physical activity standards for grades kindergarten through twelve (K-12) developed pursuant to this section.

History. Acts 2003, No. 1220, § 1; 2003 (2nd Ex. Sess.), No. 29, § 1; 2007, No. 201, § 1; 2007, No. 317, § 3.

Amendments. The 2007 amendment by No. 201 inserted "and body mass index for age assessment protocols" in (a); inserted (b)(4), and added the (b)(5) designation; inserted "Beginning with kindergarten and then in even numbered grades" in (c)(3), rewrote (c)(4), and added (c)(3) [(c)(5)];

The 2007 amendment by No. 317 added "the House Interim Committee on Education, and the Senate Interim Committee on Education" in (f)(1) and added an (f)(2).

20-7-136. Statewide fluoridation program.

(a) As used in this section, "water system" means a facility including without limitation a parent system, consecutive system, or other system that holds, treats, and supplies water directly or through a consecutive system or consecutive systems to five thousand (5,000) persons or more.

(b) The company, corporation, municipality, county, government agency, or other entity that owns or controls a water system shall control the quantity of fluoride in the water so as to maintain a fluoride content established by the Department of Health.

(c) The State Board of Health shall adopt rules relating to the fluoridation of water systems that shall include without limitation:

(1) Permissible concentrations of fluoride to be maintained by a water system; and

(2) Requirements and procedures for maintaining permissible concentrations of fluoride including without limitation:

(A) Necessary equipment;

(B) Recordkeeping;

(C) Reporting; and

(D) Testing.

(d)(1) A water system required to fluoridate under this section is not required to comply with the requirements of this section until funds sufficient to pay capital start-up costs for fluoridation equipment for the system have become available from any source other than tax revenue or service revenue regularly collected by the company, corporation, municipality, county, or other government agency that owns or controls the water system.

(2) A licensed civil engineer recognized or employed by the department who is familiar with the design, construction, operation, and maintenance of fluoridation systems shall determine for the department whether the capital start-up costs claimed under subdivision (d)(1) of this section are reasonable.

(e) A water system for a city in this state that receives its water supply from a community in another state is not required to comply with this section until a substantially similar fluoridation program is enacted for the water system of the community in the other state.

History. Acts 2011, No. 197, § 1.

20-7-137. Soccer goal safety.

(a)(1) As used in this section, "public recreation area" means an area that is used by members of the public for recreational activities.

(2) "Public recreation area" includes a privately owned or publicly owned:

(A) Park;

(B) Sports field;

(C) Auditorium;

(D) School playground; or

(E) Other school facility.

(b) A soccer goal in a public recreation area shall be anchored according to the Guidelines for Movable Soccer Goal Safety promulgated by the United States Consumer Product Safety Commission as in effect on February 1, 2011, or the guidelines adopted by the Department of Health.

(c) The Department of Health shall develop and adopt guidelines for soccer goal safety as provided under this section.

History. Acts 2011, No. 772, § 2.

A.C.R.C. Notes. Acts 2011, No. 772, § 1, provided: "The General Assembly finds that:

"(1) On January 26, 2011, a tragic incident occurred when Jonathan Brian Nelson, who was nine (9) years of age, died of injuries sustained when an unanchored soccer goal fell on his head at Elm Tree Elementary School in Bentonville;

"(2) There are approximately five hundred thousand (500,000) soccer goals in the United States, and many of these soccer goals are unsafe because they are improperly designed, manufactured, or installed;

"(3) Problems arise with instability of movable soccer goals when they are unanchored, not properly anchored, or not properly counterbalanced;

"(4) Unstable soccer goals pose an unnecessary risk of tip-over to children who climb on the goals or nets or hang from the crossbar and can cause catastrophic injury to persons around the soccer goal;

"(5) There were at least nine (9) children under the age of sixteen (16) killed in accidents involving movable soccer goals between 1998 and mid-2010 and two thousand (2,000) serious injuries during this same period, according to the United States Consumer Products Safety Commission; and

"(6) This act is necessary to ensure the safety of children around soccer goals at schools and other recreational areas in the state."

20-7-138. Low-voltage carbon monoxide detectors required in new home construction.

(a) For a new home constructed after January 1, 2012, a low-voltage carbon monoxide alarm shall be installed on each floor.

(b) A low-voltage carbon monoxide alarm may receive primary power from:

(1) The building wiring if the wiring is served from an on-site electrical power system; or

(2) A battery.

(c)(1) A combination smoke and low-voltage carbon monoxide alarm may be installed if the manufacturer lists the alarm for combination use.

(2) A combination smoke and low-voltage carbon monoxide alarm shall have distinctly different alarm signals for smoke alarm or low-voltage carbon monoxide alarm activation.

(d) A low-voltage carbon monoxide alarm shall not be located:

(1) Within or near the openings to garages, bathrooms, or furnace rooms;

(2) In or near locations specified as "prohibited", "not recommended", or a similar specification in the manufacturer's installation instructions; or

(3) More than three (3) feet above the floor.

(e) Except for service or repair, a low-voltage carbon monoxide alarm shall not be removed or disabled.

(f) A person who pleads guilty or nolo contendere to or is found guilty of violating this section is guilty of a Class A misdemeanor.

(g) This section does not apply to all-electric homes.

History. Acts 2011, No. 146, § 1.

Subchapter 3 — State Health Data Clearinghouse Act

SECTION.
20-7-305. State Board of Health to prescribe rules and regulations — Data collected not subject to discovery.
20-7-306. Reports — Assistance.
20-7-308. Repealer.

20-7-305. State Board of Health to prescribe rules and regulations — Data collected not subject to discovery.

(a) The State Board of Health shall prescribe and enforce such rules and regulations as may be necessary to carry out this subchapter, including the manner in which data are collected, maintained, compiled, and disseminated, and including such rules as may be necessary to promote and protect the confidentiality of data reported under this subchapter.

(b) Data provided, collected, or disseminated under this subchapter which identifies, or could be used to identify, any individual patient, provider, institution, or health plan shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c)(1)(A) The Department of Human Services may provide data only for purposes of research and aggregate statistical reporting to the Arkansas Center for Health Improvement, the Agency for Healthcare Research and Quality for its Healthcare Cost and Utilization Project, or other researchers for research projects approved by the Department of Health to rules promulgated by the State Board of Health that provide for appropriate security and confidentiality protections for the data.

(B) The Department of Human Services also shall provide data to the Arkansas Hospital Association for its price transparency and consumer-driven health care project that will make price and quality information about Arkansas hospitals available to the general public.

(2) The data shall be treated in a manner consistent with all state and federal privacy requirements, including, without limitation, the federal Health Insurance Portability and Accountability Act of 1996 privacy rule, specifically 45 C.F.R. § 164.512(i).

(3) Any identifiable data provided, collected, or disseminated under this subsection shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq.

(d) It shall be unlawful for the center to release any patient-identifying information to any nongovernmental third party.

History. Acts 1995, No. 670, § 2; 2005, No. 1434, § 1; 2007, No. 616, § 1.

Amendments. The 2007 amendment added "or other researchers . . . protections for the data" and made related changes in present (c)(1)(A); and added (c)(1)(B).

20-7-306. Reports — Assistance.

(a) The Director of the Department of Health shall prepare and submit a biennial report to the Governor and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(b) The Department of Health shall provide assistance to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof in the development of information necessary in the examination of health care issues.

(c)(1)(A) With regard to §§ 6-18-702(d), 6-60-504(b), and 20-78-206(a)(2)(B), the department shall report every six (6) months to the committees regarding:

(i) The geographic patterns of exemptions, vaccination rates, and exemptions in those areas as well as the rest of the state; and

(ii) Disease incidence of vaccine-preventable diseases collected by the division.

(B) The collection of exemption information shall begin January 4, 2004.

(C) Reports shall begin at the first interim meeting of the committees.

(2) [Repealed.]

(3) [Repealed.]

History. Acts 1995, No. 670, § 2; 1997, No. 179, § 22; 2003, No. 999, § 4; 2007, No. 827, § 148.

Amendments. The 2007 amendment deleted (c)(2) and (3).

20-7-308. Repealer.

All laws and parts of laws in conflict with this subchapter are repealed, except that nothing in this subchapter shall be interpreted to repeal any provision which authorizes the Health Services Permit Agency to gather such data as may be necessary to conduct permit-of-approval activities.

History. Acts 1995, No. 670, § 6.

Publisher's Notes. This section is being set out to correct a reference to an agency name.

Subchapter 5 — Arkansas Health-Conscious Shopper Act

SECTION.
20-7-501. Title.
20-7-502. Findings — Intent.
20-7-503. Arkansas Health-Conscious Shopper Program.
20-7-504. Department of Health — Guidelines.

20-7-501. Title.

This subchapter shall be known and may be cited as the "Arkansas Health-Conscious Shopper Act".

History. Acts 2007, No. 48, § 1.

20-7-502. Findings — Intent.

(a) The General Assembly finds that shopping cart handles may be contaminated with bodily fluids such as blood, saliva, mucus, and even urine and fecal matter.

(b) This subchapter is intended to:

(1) Increase awareness of Arkansas shoppers, infants, and young children about potential contamination from contact with a shopping cart handle;

(2) Provide a barrier of protection between a shopper and a shopping cart handle; and

(3) Prevent the spread of viruses or bacteria.

History. Acts 2007, No. 48, § 1.

20-7-503. Arkansas Health-Conscious Shopper Program.

(a) There is created the Arkansas Health-Conscious Shopper Program.

(b) Under the program, each Arkansas business that uses shopping carts or infant carriers is encouraged to voluntarily provide consumers with sanitation wipes at the entrance of its business on or before January 1, 2008.

History. Acts 2007, No. 48, § 1.

20-7-504. Department of Health — Guidelines.

The Department of Health shall develop guidelines for businesses in the appropriate types and use of sanitation wipes for shopping cart handles.

History. Acts 2007, No. 48, § 1.

Subchapter 6 — Prescription Drug Monitoring Program Act

SECTION.
20-7-601. Title.
20-7-602. Purpose.
20-7-603. Definitions.
20-7-604. Requirements for the Prescription Drug Monitoring Program.
20-7-605. Prescription Drug Monitoring Program Advisory Committee — Creation — Members.
20-7-606. Confidentiality.
20-7-607. Providing prescription monitoring information.
20-7-608. Information exchange with other prescription drug monitoring programs.

SECTION.
20-7-609. Authority to contract.
20-7-610. Authority to seek funding.
20-7-611. Unlawful acts and penalties.
SECTION.
20-76-612. Privacy rights protected.
20-7-613. Rules.
20-7-614. Effective date.

20-7-601. Title.

This subchapter shall be known and may be cited as the "Prescription Drug Monitoring Program Act".

History. Acts 2011, No. 304, § 1.

20-7-602. Purpose.

The purpose of this subchapter is to protect the state health system and the citizens of Arkansas by:

(1) Enhancing patient care by providing prescription monitoring information that will ensure legitimate use of controlled substances in health care, including palliative care, research, and other medical pharmacological uses;

(2) Helping curtail the misuse and abuse of controlled substances;

(3) Assisting in combating illegal trade in and diversion of controlled substances; and

(4) Enabling access to prescription information by practitioners, law enforcement agents, and other authorized individuals and agencies and to make prescription information available to practitioners, law enforcement agents, and other authorized individuals and agencies in other states.

History. Acts 2011, No. 304, § 1.

20-7-603. Definitions.

As used in this subchapter:

(1) "Controlled substance" means a drug, substance, or immediate precursor in Schedules II-V;

(2) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including without limitation the prescribing, administering, packaging, labeling, or compounding necessary to prepare the controlled substance for that delivery;

(3)(A) "Dispenser" means a practitioner who dispenses.

(B) "Dispenser" does not include:

(i) A licensed hospital pharmacy when it is distributing controlled substances for the purpose of outpatient services, inpatient hospital care, or at the time of discharge from a hospital, except for a pharmacy owned by a hospital that has a retail pharmacy permit when the pharmacy is distributing controlled substances directly to the public;

(ii) A wholesale distributor of Schedule II-Schedule V controlled substances; or

(iii) A practitioner or other authorized person who administers a controlled substance;

(4) "Exchangeability" means the ability of the program to electronically share reported information with another state's prescription monitoring program if the information concerns the dispensing of a controlled substance either:

(A) To a patient who resides in the other state; or

(B) Prescribed by a practitioner whose principal place of business is located in the other state;

(5) "Investigation" means an active inquiry that is being conducted with a reasonable, good faith belief that the inquiry:

(A) Could lead to the filing of administrative, civil, or criminal proceedings; or

(B) Is ongoing and continuing and a reasonable, good faith anticipation exists for securing an arrest or prosecution in the foreseeable future;

(6) "Patient" means the person or animal who is the ultimate user of a controlled substance for whom a lawful prescription is issued and for whom a controlled substance is lawfully dispensed;

(7) "Practitioner" means:

(A) A physician, dentist, veterinarian, advanced practice nurse, physician assistant, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state; and

(B) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state;

(8) "Prescribe" means to issue a direction or authorization, by prescription, permitting a patient lawfully to obtain a controlled substance;

(9) "Prescriber" means a practitioner or other authorized person who prescribes a Schedule II, III, IV, or V controlled substance;

(10) "Prescription" means a controlled substance lawfully prescribed and subsequently dispensed;

(11) "Prescription drug monitoring program" means a program that collects, manages, analyzes, and provides information regarding Schedule II, III, IV, and V controlled substances as provided under the Uniform Controlled Substances Act, § 5-64-101 et seq., §§ 5-64-1101 — 5-64-1103, the Food, Drug, and Cosmetic Act, § 20-56-201 et seq., or §§ 20-64-501 — 20-64-513;

(12) "Schedule II" means controlled substances that are placed in Schedule II under § 5-64-205;

(13) "Schedule III" means controlled substances that are placed in Schedule III under § 5-64-207;

(14) "Schedule IV" means controlled substances that are placed in Schedule IV under § 5-64-209;

(15) "Schedule V" means controlled substances that are placed in Schedule V under § 5-64-211; and

(16) "Ultimate user" means a person who lawfully possesses a controlled substance for:

(A) The person's own use;

(B) The use of a member of the person's household; or

(C) Administering to an animal owned by a person or by a member of the person's household.

History. Acts 2011, No. 304, § 1.

20-7-604. Requirements for the Prescription Drug Monitoring Program.

(a) The State Board of Health shall create the Prescription Drug Monitoring Program upon the Department of Health's procuring adequate funding to establish the program.

(b)(1) Each dispenser shall submit to the department information regarding each controlled substance dispensed.

(2) A dispenser located outside Arkansas and licensed and registered by the Arkansas State Board of Pharmacy shall submit to the department information regarding each controlled substance prescription dispensed to an ultimate user whose address is within Arkansas.

(3) The board shall create a controlled substances database for the Prescription Drug Monitoring Program.

(c) Each dispenser required to report under subsection (b) of this section shall submit to the department by electronic means information that shall include without limitation:

(1) The dispenser's identification number;

(2) The date the prescription was filled;

(3) The prescription number;

(4) Whether the prescription is new or is a refill;

(5) The National Drug Code number for the controlled substance that is dispensed;

(6) The quantity of the controlled substance dispensed;

(7) The number of days' supply dispensed;

(8) The number of refills ordered;

(9)(A) A patient identifier.

(B) A patient identifier shall not be a social security number or a driver's license number;

(10) The patient's name;

(11) The patient's address;

(12) The patient's date of birth;

(13) The patient's gender;

(14) The prescriber's identification number;

(15) The date the prescription was issued by the prescriber; and

(16) The source of the payment for the prescription.

(d) Practitioners are encouraged to access or check the information in the controlled substance database created under this subchapter before prescribing, dispensing, or administering medications.

(e) This subchapter does not prohibit licensing boards from requiring practitioners to access or check the information in the controlled substance database as a part of a review of the practitioner's professional practice.

(f) Each dispenser shall submit the required information in accordance with transmission methods and frequency established by the department.

(g) The department shall create a process for patients to address errors, inconsistencies, and other matters in their record as maintained under this section, including cases of breach of privacy and security.

(h) The department shall limit access to only those employees whose access is reasonably necessary to carry out this section.

History. Acts 2011, No. 304, § 1.

20-7-605. Prescription Drug Monitoring Program Advisory Committee — Creation — Members.

(a) The Prescription Drug Monitoring Program Advisory Committee shall be created by the State Board of Health upon the Department of Health's procuring adequate funding to establish the Prescription Drug Monitoring Program.

(b) The mission of the advisory committee is to consult with and advise the Department of Health on matters related to the establishment, maintenance, operation, and evaluation of the Prescription Drug Monitoring Program.

(c) The committee shall consist of:

(1) One (1) representative designated by each of the following organizations:

(A) The Arkansas Academy of Physician Assistants;

(B) The Arkansas Association of Chiefs of Police;

(C) The Arkansas Drug Director;

(D) The Arkansas Medical Society;

(E) The Arkansas Nurses Association;

(F) The Arkansas Optometric Association;

(G) The Arkansas Osteopathic Medical Association;

(H) The Arkansas Pharmacists Association;

(I) The Arkansas Podiatric Medical Association;

(J) The Arkansas Prosecuting Attorneys Association;

(K) The Arkansas Sheriffs Association;

(L) The Arkansas State Dental Association;

(M) The Arkansas Veterinary Medical Association;

(N) The State Board of Health;

(O) The Arkansas Public Defender Commission; and

(P) A mental health provider or certified drug and alcohol counselor; and

(2) One (1) consumer appointed by the Governor.

History. Acts 2011, No. 304, § 1.

20-7-606. Confidentiality.

(a) Prescription information submitted to the Department of Health under this subchapter is confidential and not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b)(1) The controlled substances database created in this subchapter and all information contained in the controlled substances database and any records maintained by the department or by an entity contracting with the department that is submitted to, maintained, or stored as a part of the controlled substances database is privileged and confidential, is not a public record, and is not subject to subpoena or discovery in a civil proceeding.

(2) Information in the controlled substances database may be accessed by:

(A) A certified law enforcement officer pursuant to a criminal investigation but only after the law enforcement officer obtains a search warrant signed by a judge that demonstrates probable cause to believe that a violation of federal or state criminal law has occurred, that specified information contained in the database would assist in the investigation of the crime, and that the specified information should be released to the certified law enforcement officer;

(B) A regulatory body engaged in the supervision of activities of licensing or regulatory boards of practitioners authorized to prescribe or dispense controlled substances; or

(C) A person or entity investigating a case involving breaches of privacy involving the database or its records.

(c) This section does not apply to information, documents, or records created or maintained in the regular course of business of a pharmacy, medical, dental, optometric, or veterinary practitioner, or other entity covered by this subchapter, and all information, documents, or records otherwise available from original sources are not immune from discovery or use in a civil proceeding merely because the information contained in the records was reported to the controlled substances database under this subchapter.

(d) The department shall establish and enforce policies and procedures to ensure that the privacy and confidentiality of patients are maintained and that patient information collected, recorded, transmitted, and stored is protected and not disclosed to persons except as listed in § 20-7-607.

(e) The Prescription Drug Monitoring Program shall establish and maintain a process for verifying the credentials and authorizing the use of prescription information by individuals and agencies listed in § 20-7-607.

History. Acts 2011, No. 304, § 1.

20-7-607. Providing prescription monitoring information.

(a)(1) The Department of Health may review the Prescription Drug Monitoring Program information, including without limitation a review to identify information that appears to indicate whether a person may be obtaining prescriptions in a manner that may represent misuse or abuse of controlled substances.

(2) If information of misuse or abuse is identified, the department shall notify the practitioners and dispensers who prescribed or dispensed the prescriptions.

(b) The department shall provide information in the Prescription Drug Monitoring Program upon request and at no cost only to the following persons:

(1) A person authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for his or her patients or for reviewing information regarding prescriptions that are recorded as having been issued or dispensed by the requester;

(2) A patient who requests his or her own prescription monitoring information;

(3) A parent or legal guardian of a minor child who requests the minor child's Prescription Drug Monitoring Program information;

(4)(A) A designated representative of a professional licensing board of the professions of the healing arts representing health care disciplines whose licensees are prescribers pursuant to an investigation of a specific individual, entity, or business licensed or permitted by that board.

(B) Except as permitted by subsection (a)(2) of this section, the department shall provide information under subsection (b)(4)(A) of this section only if the requesting board states in writing that the information is necessary for an investigation;

(5) The State Medical Examiner as authorized by law to investigate causes of deaths for cases under investigation pursuant to his or her official duties and responsibilities;

(6) Local, state, and federal law enforcement or prosecutorial officials engaged in the administration, investigation, or enforcement of the laws governing controlled substances required to be submitted under this subchapter pursuant to the agency's official duties and responsibilities; and

(7) Personnel of the department for purposes of administration and enforcement of this subchapter.

(c) Information collected under this subchapter shall be maintained for three (3) years.

(d) The department may provide information to public or private entities for statistical, research, or educational purposes after encrypting or removing the patient's name, street name and number, patient identification number, month and day of birth, and prescriber information that could be used to identify individual patients or persons who received prescriptions from dispensers, or both.

History. Acts 2011, No. 304, § 1.

20-7-608. Information exchange with other prescription drug monitoring programs.

(a) The Department of Health may provide prescription monitoring information to other states' prescription drug monitoring programs, and the information may be used by those programs consistent with this subchapter.

(b) The department may request and receive prescription monitoring information from other states' prescription drug monitoring programs and may use the information under this subchapter.

(c) The department may develop the capability to transmit information to other prescription drug monitoring programs and receive information from other prescription drug monitoring programs employing the standards of exchangeability.

(d) The department may enter into written agreements with other states' prescription drug monitoring programs for the purpose of describing the terms and conditions for sharing of prescription information under this subchapter.

History. Acts 2011, No. 304, § 1.

20-7-609. Authority to contract.

(a) The Department of Health may contract with another agency of this state or with a private vendor, as necessary, to ensure the effective operation of the Prescription Drug Monitoring Program.

(b) A contractor shall be bound to comply with the provisions regarding confidentiality of prescription information as outlined in this subchapter and shall be subject to the penalties specified in this subchapter for unlawful acts.

History. Acts 2011, No. 304, § 1.

20-7-610. Authority to seek funding.

(a) The Department of Health may make application for, receive, and administer grant funding from public or private sources for the development, implementation, or enhancement of the Prescription Drug Monitoring Program.

(b) A fee shall not be levied against practitioners for the purpose of funding or complying with the Prescription Drug Monitoring Program.

History. Acts 2011, No. 304, § 1.

20-7-611. Unlawful acts and penalties.

(a)(1) It is unlawful for a dispenser to purposely fail to submit prescription monitoring information as required under this subchapter.

(2) A violation of subdivision (a)(1) of this section is a Class B misdemeanor.

(b)(1) It is unlawful for a dispenser to purposely submit fraudulent prescription information.

(2) A violation of subdivision (b)(1) of this section is a Class D felony.

(c)(1) It is unlawful for a person authorized to receive prescription monitoring information to purposely disclose the information in violation of this subchapter.

(2) A violation of subdivision (c)(1) of this section is a Class C felony.

(d)(1) It is unlawful for a person authorized to receive prescription drug monitoring program information to use such information in a manner or for a purpose in violation of this subchapter.

(2) A violation of subsection (d)(1) of this section is a Class C felony.

(e)(1) It is unlawful for a person to knowingly obtain, use, or disclose or attempt to obtain, use, or disclose information by fraud or deceit from the Prescription Drug Monitoring Program or from a person authorized to receive information from the Prescription Drug Monitoring Program under this subchapter.

(2) A violation of subdivision (e)(1) of this section is a Class C felony.

(f) In addition to the criminal penalties provided in this section, a dispenser or practitioner who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of this subchapter may be subject to disciplinary action by the dispenser's or practitioner's licensing board.

(g) In addition to the criminal penalties provided in this section, a law enforcement officer who uses or discloses confidential information received from the Prescription Drug Monitoring Program in a manner or for a purpose in violation of this subchapter may be subject to disciplinary action by the law enforcement officer's agency or department.

(h) This subchapter does not limit a person whose privacy has been compromised unlawfully under this section from bringing a civil action to address the breach of privacy or to recover all damages to which the person may be entitled per violation, including attorney's fees and costs.

History. Acts 2011, No. 304, § 1.

20-76-612. Privacy rights protected.

This subchapter does not give authority to any person, agency, corporation, or other legal entity to invade the privacy of any citizen as defined by the General Assembly, the courts, or the United States Constitution or the Constitution of the State of Arkansas other than to the extent provided in this subchapter.

History. Acts 2011, No. 304, § 1.

20-7-613. Rules.

The State Board of Health shall adopt rules to implement this subchapter.

History. Acts 2011, No. 304, § 1.

20-7-614. Effective date.

(a) The Prescription Drug Monitoring Program shall become operational March 1, 2013, if full funding is available under § 20-7-610.

(b) The Director of the Department of Health may suspend operation of the program if adequate funding under § 20-7-610 ceases.

History. Acts 2011, No. 304, § 1.

CHAPTER 8

STATE HEALTH AGENCIES AND PROGRAMS

SUBCHAPTER.

1. Health Services Permit Agency.
5. Newborn Umbilical Cord Blood Initiative Act.
6. Alzheimer's Advisory Council.

Subchapter 1 — Health Services Permit Agency

SECTION.

20-8-106. Health Services Program — Permits generally.
20-8-108. Fees and fines.
20-8-110. Collection and dissemination of health data.

20-8-103. Health Services Permit Commission — Powers and duties.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-8-106. Health Services Program — Permits generally.

(a)(1)(A) From March 8, 1989, until June 1, 1989, there shall be no new home health care agencies or nursing homes, with the exception of intermediate care facilities for the mentally retarded with fifteen (15) or fewer beds and with the exception of nursing home applications under review by the Health Services Permit Agency on June 2, 1987, and except for nursing homes with thirty-five (35) beds or fewer attached to or a part of hospitals located in cities or towns where no nursing home exists, provided that applicants for such nursing homes shall obtain a permit of approval from the proper authority pursuant to this subchapter, nor shall there be any additional beds

licensed for existing nursing homes or intermediate care facilities in this state.

(B) The Health Services Permit Commission may remove any or all of the moratoria anytime after June 1, 1988, provided the commission has duly adopted and promulgated standards for the review of the health facility for which the moratorium is removed.

(C) Nursing home applications under review by the agency on June 2, 1987, shall be considered under this subchapter under updated standards on a county-by-county basis.

(2) No permit of approval shall be required by the agency or the commission for any applicant to qualify for a Class B license, as provided in § 20-10-801 et seq., to operate a home health care services agency, if the agency was serving patients on or before June 30, 1988, and if the agency serves the residents of the county where the principal office is located.

(3) Nursing home applications under review by the agency on June 2, 1987, shall be considered under the provisions of this subchapter under updated standards on a county-by-county basis.

(4)(A) Beginning July 1, 2005, the agency may not accept applications for permits of approval for the construction of new residential care facilities.

(B) Applications for replacement of residential care facilities may not be accepted and processed after July 1, 2005.

(C) However, applications for replacement of residential care facilities shall be accepted for residential care facilities of sixteen (16) beds or fewer but only if the number of beds required for replacement is less than or equal to the number of beds for which the residential care facility was licensed before the application for replacement.

(b)(1)(A) The alteration or renovation of a health facility having an associated capital expenditure of less than one million dollars ($1,000,000) for nursing homes and not resulting in additional bed capacity shall not require a permit of approval.

(B) However, the agency shall not allow hospital acute care beds to be converted to or allow their license classification to be changed to long-term care beds without going through the permit-of-approval process.

(2) Permits, legal title, and right of ownership may be transferred with the approval of the commission if the entity presently holding the permit, legal title, or right of ownership has tangible assets of at least two thousand five hundred dollars ($2,500) that will be transferred with the permit, legal title, or right of ownership.

(3) The application for the permit of approval shall include, but need not be limited to, such information as is necessary to determine:

(A) Whether the proposed project is needed or projected as being necessary to meet the needs of the locale or area in terms of the health care required for the population or geographic region;

(B) Whether the proposed project can be adequately staffed and operated when completed;

(C) Whether the proposed project is economically feasible; and

(D) Whether the project will foster cost containment through improved efficiency and productivity.

(c) If the application is granted, the agency shall issue a permit of approval, if it finds that the proposed project meets the criteria for approval as set by the commission. If the application is denied, the agency shall send written notice of the denial to the applicant which sets forth the criteria that the proposed project failed to meet.

(d) Any applicant or interested party seeking review of a final agency decision regarding permits of approval, movement of beds, or transfer of permits of approval shall file a written appeal for hearing before the commission on an approved form within thirty (30) days of the receipt of the agency decision.

(e) Appeals to the commission shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1987, No. 593, § 6; 1987 (1st Ex. Sess.), No. 40, § 6; 1989, No. 422, § 6; 1989, No. 533, § 1; 2001, No. 1800, § 11; 2005, No. 1669, § 1; 2009, No. 649, § 1.

Amendments. The 2009 amendment substituted "one million dollars ($1,000,000)" for "five hundred thousand dollars ($500,000)" in (b)(1)(A).

20-8-108. Fees and fines.

All fees and fines collected under this subchapter shall be deposited into the Miscellaneous Agencies Fund Account to be used exclusively for the maintenance and operation of the Health Services Permit Agency.

History. Acts 1987, No. 593, § 8; 1987 (1st Ex. Sess.), No. 40, § 10; 2001, No. 1800, § 12.

Publisher's Notes. This section is being set out to change the reference to the "State General Services Fund Account " to the "Miscellaneous Agencies Fund Account".

20-8-109. Approval of new projects — Repeal of Acts 1975, No. 558, § 5 — Transfer of duties.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-8-110. Collection and dissemination of health data.

(a) The Health Services Permit Agency shall act as a statewide health data clearinghouse for the acquisition and dissemination of data from health care providers, the state Medicaid program, third-party payors, state agencies, and other appropriate sources in furtherance of this section.

(b) All state agencies having information with regard to health matters shall make available to the agency such health data as is

necessary for the Health Services Permit Commission to carry out its responsibilities.

(c) All health facilities requiring a permit of approval by the state shall submit annually a report of utilization statistics as may be required by the agency.

(d) The Insurance Commissioner shall require all third-party payors, including, but not limited to, licensed insurers, medical and hospital service corporations, health maintenance organizations, and self-funded employee health plans, to provide the commission with claims data for health matters.

(e) State agencies which survey hospitals, home health agencies, outpatient surgery centers, or nursing homes for licensure or certification shall annually report to the agency on the surveys of the various facilities. The annual report shall list facilities by name with patient care citations and numbers of serious patient injuries per year by facility.

(f) The Director of the Health Services Permit Agency shall be empowered to release data collected pursuant to this section, subject to the following limitations:

(1) Data released shall not include any information which could be used to identify any individual patient; and

(2) Data released shall not include any information which could be used to associate any of the data with any specific third-party payor.

(g) The director shall prescribe such rules and regulations as may be necessary to carry out the purpose of this section.

(h)(1) With the advice of the commission, the director shall compile and publish summaries of health data collected by the agency.

(2)(A) The director shall prepare an annual report of the agency's findings and submit the report to the Governor, the General Assembly, and the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof.

(B) The agency shall provide assistance to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor in the development of information necessary in the examination of health care issues.

(i)(1) The agency may impose a fine on health facilities requiring a permit of approval for failure to timely submit reports of statistics as required by the agency.

(2) The agency may impose a fine of:

(A) Up to one hundred dollars ($100) for a report more than thirty (30) days late;

(B) Two hundred fifty dollars ($250) for a report more than sixty (60) days late; and

(C) Five hundred dollars ($500) for a report more than ninety (90) days late.

History. Acts 1989, No. 107, §§ 1-4; 1997, No. 179, § 23; 2001, No. 1800, § 14; 2005, No. 1271, §§ 1, 2; 2007, No. 827, § 149; 2007, No. 1589, §§ 1, 2.

A.C.R.C. Notes. Pursuant to Acts 2007, No. 827, § 240, the amendment of § 20-8-110 by Acts 2007, No. 1589, § 2 supersedes the amendment of § 20-8-110 by Acts 2007, No. 827, § 149.

Amendments. The 2007 amendment by No. 827 inserted "hospitals" and "outpatient surgery centers" in (i)(1), and made related changes.

The 2007 amendment by No. 1589 substituted "health facilities requiring a permit of approval" for 'hospitals, nursing homes, outpatient surgery centers, home health agencies, assisted living facilities, residential care facilities, and hospices licensed" in (c) and "health facilities requiring a permit of approval" for "nursing homes, home health agencies, assisted living facilities, residential care facilities, and hospices" in (i)(1).

Subchapter 5 — Newborn Umbilical Cord Blood Initiative Act

SECTION.
20-8-501. Title.
20-8-502. Legislative findings.
20-8-503. Definitions.
20-8-504. Newborn Umbilical Cord Blood Initiative.
20-8-505. Arkansas Commission for the Newborn Umbilical Cord Blood Initiative — Creation — Members.
20-8-506. Arkansas Commission for the Newborn Umbilical Cord Blood Initiative — Powers and duties.

20-8-501. Title.

This subchapter shall be known and may be cited as the "Newborn Umbilical Cord Blood Initiative Act".

History. Acts 2007, No. 695, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Comment, Tiny Wonders, Huge Possibility: Arkansas Act 695 and the Stem Cell Phenomenon, 61 Ark. L. Rev. 673.

20-8-502. Legislative findings.

The General Assembly finds that:

(1) More than one hundred million (100,000,000) Americans and two billion (2,000,000,000) other humans worldwide suffer from diseases that may eventually be treated more effectively or even cured with stem cells;

(2) Stem cell research has been hampered by the controversy over the use of embryonic stem cells;

(3) Stem cells are not found only in embryos;

(4) The umbilical cord, placenta, and amniotic fluid are rich in stem cells that may be used for scientific research and medical treatment without destroying embryos;

(5) Stem cell research using stem cells from postnatal tissue and fluid has already resulted in treatments for anemia, leukemia, lymphoma, lupus, multiple sclerosis, rheumatoid arthritis, sickle cell disease, spinal cord injury, and Crohn's disease;

(6) Stem cell therapies using stem cells from postnatal tissue and fluid are being studied for diseases as wide-ranging and diverse as corneal degeneration, heart disease, stroke, Parkinson's disease, and Alzheimer's disease;

(7) It is the public policy of this state to encourage the donation, collection, and storage of stem cells collected from postnatal tissue and fluid and to make such stem cells available for both scientific research and medical treatment; and

(8) It shall be the public policy of this state to encourage ethical research in life science and regenerative medicine.

History. Acts 2007, No. 695, § 1.

20-8-503. Definitions.

As used in this subchapter:

(1) "Amniotic fluid" means the fluid inside the amnion;

(2) "Nonembryonic stem cell research" means medical research involving stem cells that have not been derived from a human embryo or fetus;

(3) "Placenta" means the organ that forms on the inner wall of the human uterus during pregnancy;

(4) "Postnatal tissue and fluid" means the placenta, umbilical cord, and amniotic fluid expelled or extracted in connection with the birth of a human being;

(5) "Stem cell" means an unspecialized or undifferentiated cell that can self-replicate and has the potential to differentiate into a specialized cell type; and

(6) "Umbilical cord" means the gelatinous tissue and blood vessels connecting an unborn human being to the placenta.

History. Acts 2007, No. 695, § 1.

20-8-504. Newborn Umbilical Cord Blood Initiative.

(a)(1) On or before June 30, 2008, the Arkansas Commission for the Newborn Umbilical Cord Blood Initiative shall establish a network of postnatal tissue and fluid banks in partnership with one (1) or more public or private colleges or universities, public or private hospitals, nonprofit organizations, or private firms in this state for the purpose of collecting and storing postnatal tissue and fluid.

(2) The Newborn Umbilical Cord Blood Bank shall create a voluntary program to make tissue and fluid available for scientific research and medical treatment in accordance with this subchapter.

(3) A parent of a child born in this state may voluntarily contribute postnatal tissue and fluid to the Newborn Umbilical Cord Blood Bank.

(b)(1) The commission shall develop a voluntary program to educate pregnant patients with respect to the banking of postnatal tissue and fluid.

(2) The program shall include:

(A) An explanation of the difference between public and private postnatal tissue and fluid banking programs;

(B) The medical process involved in the collection and storage of postnatal tissue and fluid;

(C) The current and potential future medical uses of stored postnatal tissue and fluid;

(D) The benefits and risks involved in the banking of postnatal tissue and fluid; and

(E) The availability and cost of storing postnatal tissue and fluid in public and private umbilical cord blood banks.

History. Acts 2007, No. 695, § 1.

20-8-505. Arkansas Commission for the Newborn Umbilical Cord Blood Initiative — Creation — Members.

(a) The Arkansas Commission for the Newborn Umbilical Cord Blood Initiative is created.

(b)(1) The commission shall consist of eleven (11) members appointed as follows:

(A) Three (3) members appointed by the Governor as follows:

(i) One (1) member who is a physician licensed by the Arkansas State Medical Board;

(ii) One (1) member who has a financial background; and

(iii) One (1) member who has a legal background or an ethicist background, or both;

(B) Three (3) members appointed by the Speaker of the House of Representatives as follows:

(i) One (1) member who is a physician licensed by the Arkansas State Medical Board;

(ii) One (1) member who has a financial background; and

(iii) One (1) member who has a legal background or an ethicist background, or both;

(C) Three (3) members appointed by the President Pro Tempore of the Senate as follows:

(i) One (1) member who is a physician licensed by the Arkansas State Medical Board;

(ii) One (1) member who has a financial background; and

(iii) One (1) member who has a legal background or an ethicist background, or both;

(D) The Dean of the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences or his or her designee; and

(E) The Director of the Department of Health or his or her designee.

(2) The commission shall include one (1) consultant, nonvoting member who shall be the Director of Cell Therapy and Transfusion Medicine of the College of Medicine of the University of Arkansas for Medical Sciences.

(c) The Governor shall designate one (1) member as chair of the commission.

(d) The chair shall call the first meeting of the commission within sixty (60) days of his or her appointment.

(e)(1) At the first meeting of the commission, the members shall draw lots so that three (3) members serve two-year terms, three (3) members serve three-year terms, and three (3) members serve four-year terms.

(2) After the initial terms, members shall serve four-year terms.

(f) The commission shall meet at least quarterly.

(g)(1) A majority of the membership of the commission shall constitute a quorum.

(2) A majority vote of those members present shall be required for any action of the commission.

(h) Vacancies on the commission due to death, resignation, removal, or other causes shall be filled in the same manner as is provided in this section for initial appointments.

History. Acts 2007, No. 695, § 1.

20-8-506. Arkansas Commission for the Newborn Umbilical Cord Blood Initiative — Powers and duties.

(a) The Arkansas Commission for the Newborn Umbilical Cord Blood Initiative shall:

(1) Investigate the implementation of this subchapter and recommend improvements in this subchapter to the General Assembly;

(2) Make available to the public the records of all meetings of the commission and of all business transacted by the commission;

(3) Oversee the operations of the Newborn Umbilical Cord Blood Bank, including without limitation the approval of all fees established to cover administration, collection, and storage costs;

(4) Undertake the Newborn Umbilical Cord Blood Initiative by promoting awareness of the blood bank and encouraging donation of postnatal tissue and fluid to the blood bank;

(5) Ensure the privacy of persons who donate umbilical cord blood, amniotic fluid, and placental tissue to the blood bank;

(6) Develop a plan for making postnatal tissue and fluid collected under the Newborn Umbilical Cord Blood Initiative available for scientific research and medical treatment in compliance with all relevant national practice and quality standards;

(7) Develop a plan for private storage of postnatal tissue and fluid for medical treatment;

(8) Participate in the National Cord Blood Program and register postnatal tissue and fluid collected with registries operating in connection with the program;

(9) If funds are available, employ staff and enter into contracts necessary to implement this subchapter; and

(10) Report annually to the General Assembly on or before October 1 of each year concerning the activities of the commission.

(b) The commission may seek additional funding from any source, including without limitation federal grants and private grants.

History. Acts 2007, No. 695, § 1.

Subchapter 6 — Alzheimer's Advisory Council

SECTION.
20-8-601. Findings.
20-8-602. Alzheimer's Advisory Council — Creation — Membership.
20-8-603. Duties.
20-8-604. Reports.

20-8-601. Findings.

The General Assembly finds that:

(1) Alzheimer's disease is a progressive and fatal brain disease that destroys brain cells and causes problems with memory, thinking, and behavior;

(2) More than five million (5,000,000) Americans now have Alzheimer's disease;

(3) Alzheimer's disease is the most common form of dementia and is the sixth leading cause of death in the United States; and

(4) No cure exists for Alzheimer's disease, but treatments for symptoms used in conjunction with appropriate services and support can improve the quality of life for those living with the disease.

History. Acts 2011, No. 889, § 1.

20-8-602. Alzheimer's Advisory Council — Creation — Membership.

(a) There is created the Alzheimer's Advisory Council to consist of seventeen (17) members as follows:

(1) Four (4) members appointed by the Speaker of the House of Representatives as follows:

(A) One (1) member of the House of Representatives;

(B) One (1) member who has been diagnosed with Alzheimer's disease;

(C) One (1) member to represent the health care provider community; and

(D) One (1) member to represent the adult day services industry;

(2) Four (4) members appointed by the President Pro Tempore of the Senate as follows:

(A) One (1) member of the Senate;

(B) One (1) member who is a paid caregiver of a person with Alzheimer's disease;

(C) One (1) member to represent the assisted living industry; and

(D) One (1) member who is a scientist who specializes in Alzheimer's research;

(3) Four (4) members appointed by the Governor as follows:

(A) One (1) member who is a family member of a person living with Alzheimer's disease or other form of dementia;

(B) One (1) member to represent the nursing facility industry;

(C) One (1) member who is a person active in the state chapter of the Alzheimer's Association; and

(D) One (1) member who is a person active in the state chapter of Alzheimer's Arkansas Programs and Services; and

(4) Five (5) members as follows:

(A) The Director of the Department of Health or his or her designee;

(B) The Director of the Department of Human Services or his or her designee;

(C) The Director of the Division of Behavioral Health of the Department of Human Services or his or her designee;

(D) The Director of the Arkansas Center for Health Improvement or his or her designee; and

(E) The Director of the Department of Workforce Services or his or her designee.

(b) Members of the council shall be appointed by September 1, 2011.

(c)(1) Members of the council shall serve at the pleasure of their appointing authorities.

(2) A vacancy on the council shall be filled by the original appointing authority.

(d)(1) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair from among the members of the council.

(2) The cochairs shall jointly call the first meeting of the council.

(e)(1) A majority of the members of the council shall constitute a quorum.

(2) A majority vote of the members present is required for any action of the council.

(f) Task force meetings shall be held in Pulaski County, Arkansas, and at other locations in the state as the council shall deem necessary.

(g) The Bureau of Legislative Research shall provide staff support to the council as necessary to assist the council in the performance of its duties.

(h) Legislative members of the council shall be reimbursed for expenses and per diem at the same rate and from the same source as provided by law for members of the General Assembly attending meetings of the interim committees.

History. Acts 2011, No. 889, § 1.

20-8-603. Duties.

(a) The Alzheimer's Advisory Council shall:

(1) Assess the current and future impact of Alzheimer's disease and other types of dementia on the residents of the State of Arkansas;

(2) Examine the existing industries, services, and resources addressing the needs of persons living with Alzheimer's disease, their families, and caregivers; and

(3) Develop a strategy to mobilize a state response to the public health crisis created by Alzheimer's disease and other types of dementia.

(b) The council shall include the following in its assessments and recommendations:

(1) Statewide trends in the number of persons living with Alzheimer's disease and other forms of dementia and the needs of those persons;

(2) The state's role in providing long-term care, family caregiver support, and other forms of assistance to persons with early-stage and younger onset of Alzheimer's disease;

(3) State policy regarding persons with Alzheimer's disease and developmental disabilities;

(4) Existing services, resources, and capacity, including without limitation:

(A) The type, cost, and availability of dementia services;

(B) The dementia-specific training requirements for long-term care staff;

(C) Quality care measures for residential care facilities;

(D) The capacity of public safety and law enforcement agencies to respond to persons with Alzheimer's disease;

(E) The availability of home-based and community-based resources for persons with Alzheimer's disease, including the availability of respite care for families;

(F) An inventory of long-term care dementia care units;

(G) The adequacy and appropriateness of geriatric psychiatric units for persons with behavioral disorders associated with Alzheimer's and related dementia;

(H) The assisted living residential options for persons with dementia; and

(I) State support for Alzheimer's research; and

(5) Needed state policies or responses, including without limitation:

(A) Directions for the provision of clear and coordinated services and supports for persons and families living with Alzheimer's and related disorders; and

(B) Strategies for addressing identified gaps in services.

History. Acts 2011, No. 889, § 1.

20-8-604. Reports.

The Alzheimer's Advisory Council shall present a draft of assessments and recommendations for meeting the Alzheimer's disease needs in the State of Arkansas to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor on or before October 1 of each year.

History. Acts 2011, No. 889, § 1.

CHAPTER 9

HEALTH FACILITIES AND SERVICES GENERALLY

SUBCHAPTER.

1. General Provisions.
2. Health Facilities Services.
3. Hospitals, Clinics, Etc. — Miscellaneous Provisions.
6. Consent to Treatment.
11. Cervical Cancer Care Act of 2005.
12. Health Facility Infection Disclosure Act of 2007.

A.C.R.C. Notes. Acts 2011, No. 954, § 18, provided: "NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Department of Human Services is hereby authorized to pay from State and Federal Funds appropriated in each division Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses, as well as Certified Nursing Assistants, Residential Care Assistants, Residential Care Technicians, Residential Care Supervisors and Behavioral Health Aides.

"The stipend is $5,000 per person per year. Any student who is awarded and accepts a stipend is under employment commitment to the respective DHS Division and is required to work for that division, in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

"Each division participating in the Education Stipend Program shall determine on an annual basis, the number of student stipends available.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 1102, § 26, provided: "NURSING/DIRECT CARE EDUCATION STIPEND PROGRAM. Special provision for a Nursing/Direct Care Education Stipend Program for the Arkansas Department of Health (ADH) is hereby authorized to pay from funds appropriated in this Act. This program is for eligible nursing students who are attending accredited nursing institutions to become Registered or Licensed Practical Nurses.

"The stipend is five thousand dollars ($5,000) per person per year. Any student who is awarded and accepts a stipend is under an employment commitment to the ADH and is required to work in a full-time employee status effective immediately upon graduation. The student employment commitment is equal to the number of years the stipend was awarded and accepted. In the event of Employee/Student default of the employment commitment, the Employee/Student will be considered in breach of contract and repayment of the stipend will be required as specified in the Stipend Contract.

"The ADH shall determine, on an annual basis, the number of student sti-

pends available due to the availability of funds and the need for direct care services.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 1102, § 28, provided: "COMMUNITY HEALTH CENTERS. Allocation of state funding to Community Health Centers shall be prioritized to ensure that uninsured, under-insured, and underserved Arkansans' receive needed services in order to improve their health, with this funding to preserve and strengthen Community Health Centers and increase Arkansans access to quality primary and preventive health care. The Department of Health shall ensure that any Community Health Center that receives funding through this Act shall first seek to include, in accordance with federal rule and guidance, as many local providers of health care services as possible, such as dental, pharmacy, mental health, and other ancillary services, within each Community Health Center's service area, to participate in the provision of such services as a contractor at a fair, reasonable prevailing rate. Community Health Centers will seek local providers, community, city, county, and state partners to participate in the planning for the development, and, as an employee or contractor, in the implementation of a new Community Health Center in an area of documented unmet need. In addition to reasonable prices, the availability and service quality levels provided by the private provider must meet or exceed the level of service quality provided, as established by the respective governing board, at similarly situated Community Health Centers through the state and at all times meet professional standards of competence and quality. Annually, the Department of Health shall require from the Community Health Centers the submission of performance indicators, to be determined by the Department of Health, reflecting, at a minimum, a listing of all services provided, fee schedules based on local prevailing rates and actual costs, sliding fee scales, and uniform data sets which identify the number of uninsured, Medicaid and Medicare patients and those patients which are below and above 200% of the federal poverty level. Local private providers within the service area that may have been significantly impacted by these services will be determined by the Department of Health. The Department of Health shall institute a procurement process for the allocation of funding provided through this Act, detailing that these and other requirements are factored into the allocation of any funding provided to Community Health Centers. In the implementation of this special language, the Department of Health is permitted, at its discretion, to allow individual applicants an implementation period of up to 90 days from the effective date of individual agreements to satisfy the requirements for private provider collaboration as specified above."

Subchapter 1 — General Provisions

SECTION.

20-9-102. Shaken baby syndrome educational materials.

20-9-102. Shaken baby syndrome educational materials.

(a) A hospital or a free-standing birthing clinic shall ensure that each woman who gives birth in a hospital or a free-standing birthing clinic receives educational materials before being discharged describing the nature of, the dangers of, and methods for the prevention of shaken baby syndrome.

(b) The Department of Health shall develop and disseminate the required materials under subsection (a) of this section to hospitals and free-standing birthing clinics in the state.

(c)(1) The department may adopt rules to implement this section.

(2) The rules adopted under subdivision (c)(1) of this section shall include without limitation rules establishing procedures for reporting compliance with this section.

History. Acts 2011, No. 1128, § 1.

Subchapter 2 — Health Facilities Services

SECTION.

20-9-201. Definitions.
20-9-219. Inspections of facilities.

20-9-201. Definitions.

As used in this subchapter:

(1) "Administrator" means the chief administrative officer in the Division of Health Facilities Services of the Department of Health;

(2) "Alcohol and drug abuse inpatient treatment center" means a distinct unit within a hospital facility in which services are provided for the diagnosis, treatment, and rehabilitation of alcohol and drug abuse;

(3) "Federal act" means the Hospital Survey and Construction Act, Pub. L. No. 79-725;

(4)(A) "Hospital" means a public health center, a general, tuberculosis, mental, or chronic disease hospital, or a related facility such as a laboratory, outpatient department, nurses home or training facility, or a central service facility operated in connection with a hospital.

(B) "Hospital" does not include an establishment:

(i) Furnishing primarily domiciliary care; or

(ii) Licensed or certified by the Office of Alcohol and Drug Abuse Prevention of the Division of Behavioral Health of the Department of Human Services as an alcohol and drug abuse inpatient treatment center;

(5)(A) "Institution" means a place for the diagnosis, treatment, or care of two (2) or more persons not related to the proprietor, suffering from illness, injury, or deformity, or where obstetrical care or care of the aged, blind, or disabled is rendered over a period exceeding twenty-four (24) hours.

(B) "Institution" also includes an outpatient surgery center, outpatient psychiatric center, and infirmary.

(C) "Institution" does not include an establishment:

(i) Operated by the federal government or by any of its agencies; or

(ii) Licensed or certified by the Office of Alcohol and Drug Abuse Prevention of the Division of Behavioral Health of the Department of Human Services as an alcohol and drug abuse inpatient treatment center;

(6) "Medical facility" means a diagnostic or diagnostic and treatment center, or rehabilitation facility, as these terms are defined in the federal act, and any other medical facility for which federal aid may be authorized under federal law;

(7) "Nonprofit hospital" and "nonprofit medical facility" mean a hospital or medical facility owned and operated by one (1) or more persons or a corporation or association, no part of the net earnings of which inures to the benefit of any shareholder or individual;

(8)(A) "Outpatient psychiatric center" means a facility in which psychiatric services are offered for a period of eight (8) to sixteen (16) hours a day, and where, in the opinion of the attending psychiatrist, hospitalization, as defined in the present licensure law, is not necessary.

(B) "Outpatient psychiatric center" does not include community mental health clinics and centers as they now exist;

(9) "Outpatient surgery center" means a facility in which surgical services, other than minor dental surgery, are offered that require the use of general or intravenous anesthetics and where, in the opinion of the attending physician, hospitalization, as defined in the present licensure law, is not necessary;

(10) "Public health center" means a publicly owned facility for the provision of public health services and includes related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(11)(A) "Recuperation center" means an establishment with permanent facilities that include inpatient beds, with an organized medical staff, and with medical services including physicians' services and continuous nursing services to provide treatment for patients who are not in an acute phase of illness but who currently require primarily convalescent or restorative service that is usually post-acute hospital care of relatively short duration.

(B) "Recuperation center" does not include an establishment furnishing primarily domiciliary care; and

(12) "Surgeon General" means the Surgeon General of the United States Public Health Service.

History. Acts 1961, No. 414, § 2; 1971, No. 258, § 1; 1975, No. 190, §§ 1, 2; 1977, No. 536, §§ 1, 2; 1985, No. 980, §§ 1, 2; A.S.A. 1947, § 82-328; Acts 1987, No. 143, § 1; 2011, No. 834, § 1.

Amendments. The 2011 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (1); inserted "a distinct unit within a hospital" in present (2); deleted former (2)(B), (3), (4), and (10)(B); added present (4)(B)(ii), (5)(C)(ii), and (8); and redesignated the remaining subdivisions accordingly.

20-9-219. Inspections of facilities.

(a) As used in this section:

(1) "Accrediting organization" means an organization that awards accreditation or certification to hospitals or managed care organizations and has been recognized by the Centers for Medicare & Medicaid

Services for deemed status, including without limitation The Joint Commission;

(2)(A) "Hospital" means a facility used for the purpose of providing inpatient diagnostic care or treatment, including general medical care, surgical care, obstetrical care, psychiatric care, and specialized services or specialized treatment that is subject to the rules and regulations for hospitals in Arkansas.

(B) "Hospital" does not mean a facility primarily for the provision of long-term care;

(3) "Inspection" means the on-site review of the physical plant and practices as governed by the current rules and regulations of hospitals;

(4) "Investigation" means a specific inspection by the division related to a complaint or complaints; and

(5) "Survey" means the on-site formal review process of a hospital by the Division of Health Facilities Services at regular intervals to ensure compliance with applicable rules and regulations adopted by the Department of Health.

(b) The department shall make such inspections and surveys as it may prescribe by rule.

(c) Each hospital accredited by an accrediting organization shall be deemed by the department to be licensable without further survey by the personnel of the division if:

(1) The hospital holds current, full accreditation; and

(2) The division receives a copy of the hospital's official accreditation certificate and the complete report issued by an accrediting organization within thirty (30) days of receipt by the hospital from an accrediting organization.

(d) No hospital shall be required to submit accreditation by an accrediting organization, but whenever a hospital does not submit an accreditation certificate, the personnel of the department shall conduct such surveys as are prescribed by regulation.

(e)(1) Nothing in this section shall affect the right of an authorized representative of the department to enter upon or into the premises of a hospital at any time to make an inspection as part of an investigation when the department does so in response to a complaint or specific identifiable information that the hospital is not meeting minimum quality standards.

(2) If the division upon review of an accrediting organization report reasonably determines that a hospital may not be meeting state licensure standards, it may perform a survey of that hospital and take such steps as are necessary to enforce the standards of the department.

(f) A validation survey may be conducted on five percent (5%) of deemed hospitals during any calendar year to determine continued compliance with state regulations.

(g) The department shall continue to have authority over new construction, renovations, and alterations of the hospitals as set forth in the current regulations.

(h) All hospitals shall notify the division within thirty (30) days when there is a change in accreditation status.

(i) A staff member of the division may accompany an accrediting organization team that conducts any hospital accreditation survey as an ex officio member for the purpose of observation.

History. Acts 1961, No. 414, § 21; A.S.A. 1947, § 82-347; Acts 1999, No. 506, § 2; 2007, No. 136, § 1.

Amendments. The 2007 amendment substituted "an accrediting organization" for "the commission" throughout the section; rewrote (a)(1); deleted "and related institutions" following "hospitals" in (a)(2)(A) and (a)(3); deleted former (a)(5); substituted "an accreditation certificate" for "a commission accreditation certificate" in (d); and made related changes.

Subchapter 3 — Hospitals, Clinics, Etc. — Miscellaneous Provisions

SECTION.
20-9-302. Abortion clinics, health centers, etc. [Effective until January 1, 2012.]
20-9-302. Abortion clinics, health centers, etc. [Effective January 1, 2012.]
SECTION.
20-9-310. No liability for furnishing medical records or accessing information pursuant to subpoena or other legal obligation or authority.

Effective Dates. Acts 2006 (1st Ex. Sess.), No. 4, § 11: Apr. 7, 2006. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the need to register sex offenders and update the registration files of sex offenders is necessary to ensure the safety of the citizens of the State of Arkansas; that the provisions of this act will improve the process of registering sex offenders and updating the registration files of sex offenders; and that this act is immediately necessary because of the public risk posed by sex offenders. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 1176, § 2: Jan. 1, 2012.

20-9-302. Abortion clinics, health centers, etc. [Effective until January 1, 2012.]

A.C.R.C. Notes. Acts 2011, No. 1074, § 30, provided: "STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in accordance with Arkansas Code Annotated § 6-18-703.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Acts 2011, No. 1102, § 29, provided: "STATE FUND RESTRICTIONS. No state funds shall be used for abortion referral in public schools, or for abortion services. Funds shall be expended in accordance with Arkansas Code Annotated § 6-18-703.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Publisher's Notes. For text of section effective January 1, 2012, see the following version.

20-9-302. Abortion clinics, health centers, etc. [Effective January 1, 2012.]

(a)(1) A clinic, health center, or other facility in which the pregnancies of ten (10) or more women known to be pregnant are willfully terminated or aborted each month, including nonsurgical abortions, shall be licensed by the Department of Health.

(2) The facilities, equipment, procedures, techniques, and conditions of those clinics or similar facilities shall be subject to periodic inspection by the department.

(b) The division may adopt appropriate rules and regulations regarding the facilities, equipment, procedures, techniques, and conditions of clinics and other facilities subject to the provisions of this section to assure that the facilities, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard.

(c) The division may levy and collect an annual fee of five hundred dollars ($500) per facility for issuance of a permanent license to an abortion facility.

(d) Applicants for a license shall file applications upon such forms as are prescribed by the division. A license shall be issued only for the premises and persons in the application and shall not be transferable.

(e) A license shall be effective on a calendar-year basis and shall expire on December 31 of each calendar year. Applications for annual license renewal shall be postmarked no later than January 2 of the succeeding calendar year. License applications for existing institutions received after that date shall be subject to a penalty of two dollars ($2.00) per day for each day after January 2.

(f) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the division may transfer all unexpended funds relative to the abortion clinics that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

(g) All fees levied and collected under this section are special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

History. Acts 1983, No. 509, §§ 1, 2; A.S.A. 1947, §§ 82-367, 82-368; Acts 1987, No. 144, § 1; 2011, No. 1176, § 1.

Publisher's Notes. For text of section effective until January 1, 2012, see the bound volume.

Amendments. The 2011 amendment subdivided the section; rewrote (a)(1); and substituted "department" for "division" in (a)(2).

Effective Dates. Acts 2011, No. 1176, § 2: Jan. 1, 2012.

20-9-310. No liability for furnishing medical records or accessing information pursuant to subpoena or other legal obligation or authority.

Notwithstanding any other law to the contrary, no person or medical facility serving as a custodian of health or medical records shall be subject to any civil or criminal liability for:

(1) Providing access to or producing copies of the records pursuant to a subpoena issued by any board, agency, commission, prosecuting attorney, or grand jury;

(2) Providing access to or producing a copy of the health or medical records requested by a clerk of a court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department Human Services, or a local law enforcement agency under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.; or

(3) Requesting or accessing information under § 17-80-116.

History. Acts 1999, No. 1536, § 12; 2006 (1st Ex. Sess.), No. 4, § 10.

Subchapter 6 — Consent to Treatment

SECTION.
20-9-602. Consent generally.

20-9-602. Consent generally.

It is recognized and established that, in addition to other authorized persons, any one (1) of the following persons may consent, either orally or otherwise, to any surgical or medical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician:

(1) Any adult, for himself or herself;

(2)(A) Any parent, whether an adult or a minor, for his or her minor child or for his or her adult child of unsound mind whether the child is of the parent's blood, an adopted child, a stepchild, a foster child not in custody of the Department of Human Services, or a preadoptive child not in custody of the Department of Human Services.

(B) However, the father of an illegitimate child cannot consent for the child solely on the basis of parenthood;

(3) Any married person, whether an adult or a minor, for himself or herself;

(4) Any female, regardless of age or marital status, for herself when given in connection with pregnancy or childbirth, except the unnatural interruption of a pregnancy;

(5) Any person standing in loco parentis, whether formally serving or not, and any guardian, conservator, or custodian, for his or her ward or other charge under disability;

(6) Any emancipated minor, for himself or herself;

(7) Any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself or herself;

(8) Any adult, for his or her minor sibling or his or her adult sibling of unsound mind;

(9) During the absence of a parent so authorized and empowered, any maternal grandparent and, if the father is so authorized and empowered, any paternal grandparent, for his or her minor grandchild or for his or her adult grandchild of unsound mind;

(10) Any married person, for a spouse of unsound mind;

(11) Any adult child, for his or her mother or father of unsound mind;

(12) Any minor incarcerated in the Department of Correction or the Department of Community Correction, for himself or herself; and

(13)(A) Any foster parent or preadoptive parent for a child in custody of the Department of Human Services in:

(i)*(a)* Emergency situations.

(b) As used in this subdivision, "emergency situation" means a situation in which, in competent medical judgment, the proposed surgical or medical treatment or procedures are immediately or imminently necessary and any delay occasioned by an attempt to obtain a consent would reasonably be expected to jeopardize the life, health, or safety of the person affected or would reasonably be expected to result in disfigurement or impaired faculties;

(ii) Routine medical treatment;

(iii) Ongoing medical treatment;

(iv) Nonsurgical procedures by a primary care provider; and

(v) Nonsurgical procedures by a specialty care provider.

(B) The Department of Human Services shall be given timely notice of all admissions and discharges consented to by a foster parent or preadoptive parent for a child in custody of the Department of Human Services.

(C) The consent of a representative of the Department of Human Services is required for:

(i) Nonemergency surgical procedures;

(ii) Nonemergency invasive procedures;

(iii) "End of life" nonemergency procedures such as do-not-resuscitate orders, withdrawal of life support, and organ donation; and

(iv) Nonemergency medical procedures relating to a criminal investigation or judicial proceeding that involves gathering forensic evidence.

History. Acts 1973, No. 328, § 1; 1981, No. 511, § 1; A.S.A. 1947, § 82-363; Acts 1995, No. 632, § 1; 1997, No. 875, § 1; 2009, No. 700, § 1.

Amendments. The 2009 amendment subdivided (2) and inserted "not in custody of the Department of Human Services, or a preadoptive child not in custody of the Department of Human Services" in (2)(A); added (13); and made related changes.

Subchapter 11 — Cervical Cancer Care Act of 2005

SECTION.
20-9-1102. Cervical Cancer Task Force— Creation.
SECTION.
20-9-1103. Cervical Cancer Task Force — Powers and duties.

20-9-1102. Cervical Cancer Task Force— Creation.

(a) There is created a Cervical Cancer Task Force to consist of twelve (12) members.

(b) The Director of the Department of Health shall appoint:

(1) One (1) member to represent the Department of Health;

(2) One (1) member to represent the American Cancer Society;

(3) One (1) member to represent the Arkansas Minority Health Commission;

(4) One (1) member to represent the Arkansas Hospital Association;

(5) One (1) member to represent the Arkansas Foundation for Medical Care;

(6) One (1) member to represent the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences;

(7) One (1) member to represent the Division of Medical Services of the Department of Human Services;

(8) One (1) member to represent primary care physicians;

(9) One (1) member to represent the Arkansas Medical Society;

(10) One (1) member to represent the medical insurance industry;

(11) One (1) member to represent the community at large; and

(12) One (1) member to represent the Arkansas Medical, Dental, and Pharmaceutical Association.

(c)(1) Except for the initial members, task force members shall serve three-year terms.

(2) The initial members shall be assigned by lot so as to stagger terms to equalize as nearly as possible the number of members to be appointed each year.

(d) If a vacancy occurs, the director shall appoint a person who represents the same constituency as the member being replaced.

(e) The task force shall elect one (1) of its members to act as chair for a term of one (1) year.

(f) A majority of the members shall constitute a quorum for the transaction of business.

(g) The task force shall meet as necessary to further the intent and purpose of this subchapter.

(h) The Department of Health shall provide meeting space and administrative support for the task force.

(i) Members of the task force shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902 if funds are available.

History. Acts 2005, No. 1414, § 1; 2009, No. 280, §§ 1, 2.

Amendments. The 2009 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" twice in (b)

and in (h); and in (b), inserted "Fay W. Boozman" in (b)(6), deleted "Health and" following "Department of" in (b)(7), and substituted "primary care physicians" for "emergency medical services" in (b)(8).

20-9-1103. Cervical Cancer Task Force — Powers and duties.

(a) The Cervical Cancer Task Force shall:

(1) Make recommendations to the Breast Cancer Control Advisory Board consistent with the intent of this subchapter;

(2) Pursue both public and private funding to further the intent of this subchapter; and

(3) Develop standards and policy recommendations considering, but not limited to, the following:

(A) Methods for raising public awareness of the prevalence, causes, prevention, screening, and treatment considerations for cervical cancer;

(B) Methods for raising the medical community's awareness of the prevalence, causes, prevention, screening, and treatment considerations for cervical cancer; and

(C) Methods for ensuring that services across the spectrum of causes, prevention, screening, evaluation, and treatment are available to women in Arkansas.

(b) The Arkansas Central Cancer Registry of the Department of Health shall provide an annual cervical cancer report to the task force.

History. Acts 2005, No. 1414, § 1; 2009, No. 280, § 3.

Amendments. The 2009 amendment, in (a)(3), inserted "causes, prevention, screening" in (A), rewrote (B), deleted (C) and (E), and redesignated and rewrote the remaining subdivision as (C); substituted "Department of Health" for "Division of Chronic Disease and Disability Prevention of the Division of Health of the Department of Health and Human Services" in (b); and made related changes.

Subchapter 12 — Health Facility Infection Disclosure Act of 2007

SECTION.
20-9-1201. Title.
20-9-1202. Definitions.
20-9-1203. Health facility reports.
20-9-1204. Advisory Committee on Healthcare Acquired Infections.
20-9-1205. Reports regarding healthcare-associated infections.
20-9-1206. Privacy and confidentiality.
20-9-1207. Rules.
20-9-1208. Funding.

Effective Dates. As to the effective date of this subchapter, see § 20-9-1208.

20-9-1201. Title.

This subchapter shall be known and may be cited as the "Health Facility Infection Disclosure Act of 2007".

History. Acts 2007, No. 845, § 1.

20-9-1202. Definitions.

As used in this subchapter:

(1)(A) "Health facility" means any of the following facilities:

(i) A hospital, outpatient surgery center, public health center, or recuperation center, as those facilities are defined in § 20-9-201; and

(ii) Any other facility determined to be a source of healthcare-associated infections and designated as such by the Department of Health.

(B) "Health facility" does not include:

(i) A physician's office unless the office is otherwise licensed as an outpatient surgery center; or

(ii) An establishment furnishing primarily domiciliary care;

(2) "Healthcare-associated infection" means a localized or systemic condition in a person that:

(A) Results from adverse reaction to the presence of an infectious agent or a toxin of an infectious agent; and

(B) Was not present or incubating in the person at the time of admission to the health facility; and

(3) "National Healthcare Safety Network" means the secure Internet-based data collection surveillance system managed by the Division of Health Quality Promotion at the Centers for Disease Control created by the center for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

History. Acts 2007, No. 845, § 1; 2011, No. 634, § 1.

Amendments. The 2011 amendment rewrote (3).

20-9-1203. Health facility reports.

(a) A health facility shall collect data on healthcare-associated infection rates for the following:

(1) Central line-associated bloodstream infections in an intensive care unit; and

(2) Other categories as provided under § 20-9-1204(e).

(b)(1)(A) A health facility may voluntarily submit quarterly reports to the Department of Health on the health facility's healthcare-associated infection rates.

(B)(i) If a health facility elects to submit quarterly reports, the reports shall be submitted to the department:

(a) In a format prescribed by the department; and

(b) By April 30, July 31, October 31, and January 31 of each year.

(ii) Each quarterly report shall cover the immediately preceding calendar quarter.

(C) Data in the quarterly reports shall cover a period ending not earlier than one (1) month before the submission of the report.

(2) If the health facility is a division or subsidiary of another entity that owns or operates other health facilities, the quarterly report shall be for the specific division or subsidiary and not for the other entity.

(c)(1) A health facility participating in the Centers for Medicare and Medicaid Services Hospital Inpatient Quality Reporting Program or its successor shall authorize the department to have access to the following information that the health facility submits to the National Healthcare Safety Network:

(A) The name of the health facility; and

(B) Any information submitted to the National Healthcare Safety Network in order to satisfy the requirements of the Hospital Inpatient Quality Reporting Program.

(2) The information contained in the National Healthcare Safety Network database and obtained by the department under this section may be used by the department for surveillance and prevention purposes only and shall not be used for regulatory purposes.

History. Acts 2007, No. 845, § 1; 2011, No. 634, §§ 2, 3.

Amendments. The 2011 amendment deleted former (a)(1) through (4) and redesignated the remaining subdivisions accordingly; and added (c).

20-9-1204. Advisory Committee on Healthcare Acquired Infections.

(a) The Director of the Department of Health shall appoint an Advisory Committee on Healthcare Acquired Infections, including without limitation representatives of:

(1) Public and private hospitals, including representatives of hospitals with fewer than fifty (50) beds and representatives of hospitals with more than fifty (50) beds;

(2) Outpatient surgery centers;

(3) Direct-care nursing staff;

(4) Physicians;

(5) Infection-control professionals with expertise in healthcare-associated infections;

(6) Academic researchers; and

(7) At least one (1) representative of a consumer organization.

(b) The advisory committee shall assist the Department of Health in the development of all aspects of the department's methodology for collecting, analyzing, and disclosing the data collected under this subchapter, including without limitation:

(1) Collection methods;

(2) Formatting; and

(3) Methods and means for the release and dissemination of the data.

(c)(1) In developing the methodology for collecting and analyzing the infection-rate data, the department and the advisory committee shall consider existing methodologies and systems for data collection.

(2) Any data collection and analytical methodologies used shall be:

(A) Capable of being validated; and

(B) Based upon nationally recognized and recommended standards that may include those developed by the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Agency for Healthcare Research and Quality, or the National Quality Forum.

(3) The proposed data collection and analysis methodology shall be disclosed for public comment before any public disclosure of healthcare-associated infection rates in an annual report under § 20-9-1205.

(4)(A) The data collection and analysis methodology shall be presented to all health facilities in this state on or before September 1, 2008.

(B) The methodology may be amended based upon input from the health facilities.

(5)(A) The first voluntary quarterly report under § 20-9-1203(b) shall be presented to the department on or before January 31, 2009.

(B) Health facilities may begin voluntarily reporting data on January 31, 2009, or at any time thereafter.

(d) The department and the advisory committee shall evaluate on a regular basis the quality and accuracy of health facility data reported under this subchapter and the data collection, analysis, and dissemination methodologies used under this subchapter.

(e) After release of the second annual report published under § 20-9-1205 and upon consultation with the advisory committee and with other technical advisors who are recognized experts in the prevention, identification, and control of healthcare-associated infections and the reporting of performance data, the department may add categories of infections to those set forth in § 20-9-1203(a) in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2007, No. 845, § 1; 2011, No. 634, § 4.

Amendments. The 2011 amendment added "in compliance with the Arkansas Administrative Procedure Act, § 25-15-201, et seq." at the end of (e).

20-9-1205. Reports regarding healthcare-associated infections.

(a)(1)(A) In consultation with the Advisory Committee on Healthcare Acquired Infections, the Department of Health shall submit annually a report summarizing the health facility quarterly reports required under this subchapter to the Chair of the House Interim Committee on Public Health, Welfare, and Labor and the Chair of the Senate Interim Committee on Public Health, Welfare, and Labor.

(B) No health facility-identifiable data shall be included in the annual report, but aggregate statistical data may be included.

(2) The department shall publish the annual report on the department's website.

(3) The first annual report shall be submitted and published on or before January 1, 2010.

(b) The annual report prepared by the department under this subchapter regarding healthcare-associated infections shall be appropriately risk-adjusted.

(c) The annual report shall include an executive summary written in plain language that shall include without limitation:

(1) A discussion of findings, conclusions, and trends concerning the overall status of healthcare-associated infections in the state, including a comparison to previous years; and

(2) Policy recommendations of the department and the advisory committee.

(d) The annual report shall be made available to any person upon request.

(e) No health facility report or department disclosure shall contain information identifying a patient, employee, or healthcare professional in connection with a specific infection incident.

(f) No annual report or other department disclosure shall contain information that identifies or could be used to identify a specific health facility.

(g)(1) As part of the process of preparing the annual report, effective safeguards to protect against the dissemination of inconsistent, incomplete, invalid, inaccurate, or subjective health facility data shall be developed and implemented.

(2) These safeguards may include the exclusion of certain data or data from health facilities with a low volume of patients or procedures if the use of the data would skew the results reported.

(h) The department shall develop, with the assistance of the advisory committee, a process of regular and confidential feedback for health facilities regarding the data collected so that each health facility's data will be available to that health facility for its quality improvement efforts.

History. Acts 2007, No. 845, § 1.

20-9-1206. Privacy and confidentiality.

(a) It is the intent of the General Assembly that a patient's right of confidentiality shall not be violated in any manner under this subchapter.

(b) Social security numbers and any other information that could be used to identify an individual patient shall not be released under this subchapter.

(c) Except for the annual report that shall be a public document available to any person upon request, any data and materials collected or compiled by a health facility or obtained by the Department of Health under this subchapter shall be exempt from discovery and disclosure to the same extent that records of and testimony before committees evaluating quality of medical or hospital care are exempt under § 16-46-105(a)(1) and shall not be admissible in any legal proceeding.

(d) Data collected and reported under this subchapter shall not be deemed to have established a standard of care for any purposes in a private civil litigation.

History. Acts 2007, No. 845, § 1.

20-9-1207. Rules.

The State Board of Health shall promulgate rules to implement this subchapter.

History. Acts 2007, No. 845, § 1.

20-9-1208. Funding.

This subchapter is contingent upon the appropriation and availability of funding necessary for the Department of Health to implement its provisions, and any requirements that actions be accomplished by a specific date shall be extended until the necessary funding is available.

History. Acts 2007, No. 845, § 1.

CHAPTER 10

LONG-TERM CARE FACILITIES AND SERVICES

SUBCHAPTER.

1. General Provisions.
2. Office of Long-Term Care.
9. Arkansas Long-Term Care Facility Receivership Law.
10. Omnibus Long-Term Care Reform Act of 1988.
13. Nursing Home Resident and Employee Immunization.
14. Staffing Requirements for Nursing Facilities and Nursing Homes.
16. Quality Assurance Levy.
19. Dispute Resolution for Long-Term Care Facilities.
21. Arkansas Options Counseling for Long-Term Care Program.
22. Long-Term Care Quality Assurance.
23. Personal care service providers.

Subchapter 1 — General Provisions

SECTION.

20-10-101. Definitions.
20-10-107. Long-term care facility — Notice of certain incidents.
20-10-108. Quality of dietary management in long-term care facilities.

20-10-101. Definitions.

As used in this chapter:

(1) "Administrative remedy" means temporary management, denial of payment for all new admissions, transfer of residents, termination or suspension of license, termination of provider agreement, directed plan

of correction, directed in-service training, and remedies established by Arkansas law, including remedies provided in § 20-10-1408;

(2) "Administrator-in-training program" means a program for gaining supervised practical experience in long-term care administration;

(3) "Assisted living facility" means the same as in § 20-10-1703;

(4) "Clock hour" means a period of contact experience comprising the full sixty (60) minutes;

(5) "Department" means the Department of Human Services;

(6) "Director" means the Director of the Department of Human Services;

(7) "Division" means the appropriate division as determined by the Director of the Department of Human Services;

(8) "Head injury" means a noncongenital injury to the brain or a neurological impairment caused by illness, accident, or nondegenerative etiology;

(9) "Head injury retraining and rehabilitation" means an individualized program of instruction designed to assist an individual suffering disability as a result of head injury to reduce the adverse effects of the disability and improve functioning in activities of daily living and work-related activities, but which does not include inpatient diagnostic care, and which may be offered in a residential or day program;

(10)(A) "Long-term care facility" means a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care.

(B) "Long-term care facility" does not include an adult day care program that:

(i) Provides care and supervision to meet the needs of twelve (12) or fewer functionally impaired adults at any time in a place other than the adult's home;

(ii) Provides services to clients for periods of four (4) hours or less per day for only one (1) day per week;

(iii) Designates an individual to act as the program director to have responsibility for the operation of the program;

(iv) Posts a notice in eighteen-point type that:

(a) Is located at or near the main entrance to the structure in which the program operates;

(b) Lists the name and contact information of the program director;

(c) Lists the name and the contact telephone number for the Adult Protective Services Unit of the Department of Human Services; and

(d) Lists the name and the contact telephone number for the Office of Long-Term Care;

(v) Operates in a building or structure that is at all times in compliance with safety code requirements as determined by the local fire authority; and

(vi) Operates in accordance with the National Alzheimer's Association Standards of Dementia Care Practices or similarly nationally

recognized standards for the treatment and care of individuals with Alzheimer's or related dementia, as in existence on January 1, 2009;

(11) "Long-term care facility administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility whether the individual has an ownership interest in the long-term care facility and whether his or her functions and duties are shared with one (1) or more individuals;

(12) "Post-acute head injury residential care" means a residential program offering assistance in activities of daily living for individuals who are disabled because of head injury and are therefore unable to live independently;

(13) "Post-acute head injury residential care facility" means a residential care facility which is not a nursing home and which provides head injury retraining and rehabilitation for individuals who are disabled because of head injury and are not in present need of inpatient diagnostic care in a hospital or related institution;

(14) "Reciprocity licensing" means a method by which an individual licensed in good standing in one (1) state may apply for licensure status in another state, provided that the state from which the individual wishes to transfer has standards comparable to the state to which the individual wishes to transfer;

(15) "Residential care facility" means a building or structure which is used or maintained to provide for pay on a twenty-four-hour basis a place of residence and board for three (3) or more individuals whose functional capabilities may have been impaired but who do not require hospital or nursing home care on a daily basis but who could require other assistance in activities of daily living; and

(16) "Sponsor" means legal guardian.

History. Acts 1969, No. 58, § 1; 1975, No. 119, § 1; 1979, No. 28, § 1; 1985, No. 884, § 3; 1985, No. 968, § 3; A.S.A. 1947, §§ 82-2201, 82-2216; Acts 1987, No. 602, §§ 1, 2; 1988 (4th Ex. Sess.), No. 17, § 2; 1993, No. 1090, § 1; 1993, No. 1238, § 4; 2005, No. 898, § 1; 2005, No. 2191, § 2; 2007, No. 827, § 150; 2009, No. 357, § 1.

Amendments. The 2007 amendment substituted "long-term care facility" for "home" in (11).

The 2009 amendment, in (10), inserted (10)(B), redesignated the remaining text accordingly, and made a related change.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-10-107. Long-term care facility — Notice of certain incidents.

(a) As used in this section, "long-term care facility" means "long-term care facility" as defined by § 20-10-213.

(b)(1) Within twenty-four (24) hours after the incident requiring notification occurs, a long-term care facility shall notify, if known, the resident's guardian or other responsible party when:

(A) The resident suffers an injury;

(B) The resident is taken outside the facility for medical care;

(C) The resident is moved to a different room; or

(D) There is any significant change in the physical or mental condition of the resident.

(2) A long-term care facility that does not comply with this subsection is subject to a fine under § 20-10-206.

(c)(1) It is the responsibility of the long-term care facility to obtain an address and telephone number at which the resident's guardian or other responsible party is available for notification.

(2) It is the responsibility of the resident's guardian or other responsible party to notify the long-term care facility of any change in address or telephone number.

History. Acts 1993, No. 1123, §§ 1-4; 2005, No. 1994, § 109; 2011, No. 190, § 1.

Amendments. The 2011 amendment substituted "if known, the resident's guardian or other responsible party" for "by telephone and in writing the legal representative or guardian of a resident of the facility" in (b)(1); and rewrote (b)(2) and (c).

20-10-108. Quality of dietary management in long-term care facilities.

(a)(1) Persons responsible for the direction of food services in long-term care facilities having more than fifty (50) beds, at a minimum, shall be:

(A) Certified as a certified dietary manager or food service supervisor; or

(B) Enrolled in a food service supervisors course approved by the Office of Long-Term Care.

(2) [Repealed.]

(b)(1) Certified dietary managers or food service supervisors shall be required to complete fifteen (15) hours of continuing education per year.

(2) The continuing education courses shall be offered by the Dietary Managers Association or a comparable body and shall be approved by the office in order for the courses to be counted toward completion of the fifteen (15) hours.

(c) Long-term care facilities having fifty (50) or fewer beds shall allot adequate hours per week for the certified dietary manager or food service supervisor to perform supervisory duties.

History. Acts 1999, No. 1362, §§ 1-3; 2007, No. 827, § 151.

Amendments. The 2007 amendment deleted (a)(2).

Subchapter 2 — Office of Long-Term Care

SECTION.
20-10-208. Hearings.
20-10-209. Disposition of funds.
20-10-224. License required — Administration by Department of Human Services.
20-10-229. Annual disclosure statement — Requirement.
20-10-230. Annual disclosure statement — Filing.

20-10-204. Notice of violation.

CASE NOTES

In General.

Jury verdict in favor of nursing home facility's on the medical malpractice and wrongful death claims did not exonerated it from wrongdoing under the Arkansas Long-Term Care Facilities Code, § 20-10-224, because, even though the causes of action were tried together, the resident's-rights claim under 20-10-1209(a)(1) was a statutory claim separate and apart from the common-law claim of ordinary negligence, and the jury was entitled to reach conflicting results in relation to those claims; further, there was sufficient evidence that the facility violated the resident's rights under this section where the resident was left in her own urine at times, and was not provided with adequate care or treatment for pressure sores, weight loss, contractures, and other injuries from an accident in the facility van. Health Facilities Mgmt. Corp. v. Hughes, 365 Ark. 237, 227 S.W.3d 910 (2006).

20-10-208. Hearings.

(a)(1) A licensee may contest an assessment of a civil penalty or any administrative remedy imposed by the Office of Long-Term Care by sending a written request for a hearing to the Director of the Department of Human Services.

(2) Requests for hearings shall be received by the Director of the Department of Human Services within sixty (60) days after receipt by the licensee of the notice of violation and the assessment of any civil penalty or any administrative remedy imposed by the office.

(b)(1) The Director of the Department of Human Services shall assign the appeal to a fair and impartial hearing officer who shall not be a full-time employee of the Department of Human Services.

(2) The hearing officer shall preside over the hearing and make findings of fact and conclusions of law in the form of a recommendation to the director.

(3) The Director of the Department of Human Services shall review any recommendation and make the final decision. He or she:

(A) May approve the recommendation; or

(B) May for good cause:

(i) Modify the recommendation in whole or in part; or

(ii)*(a)* Remand the recommendation for further proceedings as directed by him or her.

(b) If the recommendation is remanded, the hearing officer shall conduct further proceedings as directed by the Director of the Department of Human Services and shall submit an amended recommendation to the Director of the Department of Human Services.

(4) If the Director of the Department of Human Services modifies a recommendation, in whole or in part, or if the Director of the Department of Human Services remands the decision, he or she shall state in writing at the time of the remand or modification all grounds for the remand or modification, including statutory, regulatory, factual, or other grounds.

(5) The modification or approval of a recommendation by the Director of the Department of Human Services shall be the final agency action as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c)(1)(A) The department shall commence the hearing within forty-five (45) days of receipt of the request for hearing, and the hearing officer shall notify the Director of the Office of Long-Term Care of the date, time, and place of the hearing.

(B) The notification shall be in writing and shall be sent at least twenty (20) days before the hearing date.

(C)(i) The licensee may agree in writing to waive the requirement that the department commence the hearing within forty-five (45) days.

(ii) If the licensee waives the time limit under subdivision (c)(1)(C)(i) of this section, the hearing officer shall commence the hearing at the time agreed to by the parties.

(2) The hearing officer shall issue a recommended decision within ten (10) working days after the close of the hearing, the receipt of the transcript, or the submission of post-trial briefs requested or approved by the hearing officer, whichever is latest.

(3) Unless the Director of the Department of Human Services acts on the recommendation of the hearing officer within sixty (60) days of receipt of the recommendation, the recommendation of the hearing officer shall be final.

(4) Assessments shall be paid to the office within thirty (30) working days of receipt of the notice of violation or within thirty (30) working days of receipt of the final agency action in contested cases, unless the matter has been timely appealed to circuit court.

(5) Facilities failing to pay assessed civil penalties shall be subject to a corresponding reduction in the succeeding Medicaid vendor payment in lieu of nonpayment.

(d) Except to the extent that it is inconsistent with federal law or regulation, a written request for a hearing shall stay until denied by the Director of the Department of Human Services any enforcement action imposed by the office pending the hearing and the final decision of the Director of the Department of Human Services.

(e) Any party subject to appear before a hearing officer may appear and be heard at any proceeding prescribed in this section or may be represented by an attorney or other designated representative, or both.

(f)(1) Upon written request of a licensee, the department shall provide copies of all documents, papers, reports, and other information gathered through inspection or survey that relate to the matter being appealed.

(2) The disclosure shall be made no later than ten (10) working days before a scheduled hearing date or by the date specified by the hearing officer.

(g) [Repealed.]

History. Acts 1979, No. 28, § 4; 1981, No. 908, § 1; A.S.A. 1947, § 82-2219; Acts 2005, No. 898, § 3; 2011, No. 1139, § 3.

Amendments. The 2011 amendment deleted (g).

20-10-209. Disposition of funds.

(a)(1) There is established on the books of the Treasurer of State, Auditor of State, and the Chief Fiscal Officer of the State a trust fund to be known as the "Long-Term Care Trust Fund".

(2) The fund shall consist of all moneys and interest received from the imposition of civil penalties levied by the state on long-term care facilities found to be out of compliance with the requirements of federal or state law or regulations, there to be administered by the Director of the Department of Human Services solely for the protection of the health or property of residents of long-term care facilities, including, but not limited to, the payment for the costs of relocation of residents to other facilities, maintenance and operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(b) Funds from the Long-term Care Trust Fund may also be administered by the Director of the Department of Human Services for programs or uses that, in the determination of the Director of the Office of Long-Term Care, enhance the quality of life for long-term care facility residents through the adoption of principles and building designs established by the Eden Alternative or Green House programs or other means.

History. Acts 1979, No. 28, § 4; 1981, No. 908, § 1; A.S.A. 1947, § 82-2219; Acts 1988 (4th Ex. Sess.), No. 4, § 4; 1988 (4th Ex. Sess.), No. 14, § 4; 2007, No. 193, § 1.

Amendments. The 2007 amendment added the (a)(1) and (2) designations, added (b), and made a stylistic change in (a)(1).

20-10-224. License required — Administration by Department of Human Services.

(a) No long-term care facility or related institution shall be established, conducted, or maintained in this state without obtaining a license.

(b)(1) By properly promulgating rules and regulations, the Department of Human Services may provide for the issuance of provisional long-term care facility licenses and long-term care facility licenses, including the licensure of facilities with specialized wings, units, or rooms for dementia residents, those suffering from Alzheimer's disease, and other related conditions.

(2) The licenses shall be effective on a state fiscal year basis and shall expire June 30 of each year, subject to revocation and to annual renewal.

(3)(A) If issued, a provisional license shall be effective upon submission of the application for licensure to the Office of Long-Term Care.

(B) The provisional license shall remain in effect until the issuance of the long-term care facility license.

(c)(1) Applicants for long-term care facility licensure shall file applications under oath with the office.

(2) Applications shall be signed by the administrator or the owner of the facility.

(3) Applications shall set forth the full name and address of the facility for which licensure is sought and additional information as the office may require, including affirmative evidence of ability to comply with standards, rules, and regulations as may be lawfully prescribed.

(d) No license shall be issued or renewed for any long-term care facility unless the applicant has included in the application the name and such other information required for licensure and disclosure. This requirement, as well as any other requirement determined appropriate by the department, shall be in accordance with the guidelines provided by the department.

(e)(1) Whenever ownership of controlling interest in the operation of a facility is sold by the person or persons named in the license to any other person or persons, the buyer shall obtain a license to operate the facility. The buyer shall notify the department of the sale and apply for a license at least thirty (30) days prior to the completed sale.

(2) Except as provided by the Arkansas Long-Term Care Facility Receivership Law, § 20-10-901 et seq., the seller shall notify the department at least thirty (30) days prior to the completed sale. The seller shall remain responsible for the operation of the facility until such time as a license is issued to the buyer.

(3) The buyer shall be subject to any plan of correction submitted by the previous licensee and approved by the department.

(4) The seller shall remain liable for all penalties assessed against the facility which are imposed for violations or deficiencies occurring prior to sale of ownership or operational control.

(5) Before approval of the application for licensure of the buyer, the department shall consider and may deny a license based upon the following:

(A) Whether the administrator, officers, directors, or partners have ever been convicted of a felony;

(B) Whether, within twelve (12) months prior to the license application, any facility or facilities owned or operated by the applicant or applicants have been found, after final administrative decision, to have committed a Class A long-term care violation;

(C) Whether during the three (3) years prior to the application, the applicant or applicants have had a license revoked; or

(D) Whether the applicant or applicants have demonstrated to the satisfaction of the department that any other facility owned, operated, or administered by the applicant or applicants has been in substantial compliance with the standards as set by applicable state and federal law for the previous twelve-month period prior to application for licensure.

(6)(A) Except as provided in subdivision (e)(6)(B) of this section, the buyer shall not be issued a license until the buyer provides the

department with proof of payment by the buyer to the seller of a sum equal to the annual fee under subsection (i) of this section.

(B) The department shall process a renewal application before issuing a license to a buyer if:

(i) The buyer provides the department with proof of payment by the buyer to the seller of a sum equal to the annual fee under subsection (i) of this section;

(ii) The sale occurs between March 1 and July 1 of any year;

(iii) The seller applied for or received a renewal of the license; and

(iv) The seller paid the annual fee under subsection (i) of this section to the department.

(f)(1) Before issuing a license, or approving the operation of any long-term care facility which was not licensed at the time of application or any additional bed capacity of a licensed facility, the department shall consider and may deny a license based upon the criteria established in subdivision (e)(5) of this section.

(2) This subsection is not intended to circumvent or alter the requirements set forth in § 20-8-101 et seq.

(g) Except for facilities operated by the State of Arkansas, each long-term care facility shall pay an annual licensure fee in the following amount:

(1) Residential care facilities shall pay an annual fee determined by multiplying five dollars ($5.00) by the total number of licensed resident beds;

(2) Adult day care and adult day health care facilities shall pay an annual fee determined by multiplying five dollars ($5.00) by the maximum number of persons the facility can serve; and

(3) All other long-term care facilities shall pay an annual fee determined by multiplying ten dollars ($10.00) by the total licensed resident beds or maximum licensed client population.

(h) Annual licensure fees shall be tendered with each application for a new long-term care facility license and with each long-term care facility license renewal application.

(i) Annual licensure fees are payable in one (1) sum. Fees for new licensure applications may be prorated by dividing the total fee by three hundred sixty-five (365) and multiplying the quotient, that is, the result, by the number of days from the date the application is approved through June 30, inclusive. Applications for licensure renewal shall be delivered, or if mailed shall be postmarked, on or before March 1.

(j) Any fee not paid when due shall be delinquent and shall be subject to assessment of a ten percent (10%) penalty.

(k) No license or licensure renewal shall be issued unless the annual licensure fee has been paid in full.

(l) Licenses shall be issued only for the premises and persons named in the application and shall not be transferable.

(m) All funds derived from fees collected pursuant to §§ 20-10-213 — 20-10-228 shall be deposited into the State Treasury and credited to the Division of Economic and Medical Services Administrative Fund to be

used for the maintenance and operation of the long-term care facility licensure program.

(n) The Department of Human Services shall not require a license for an adult day care program that is excepted from the definition of long-term care facility under § 20-10-101.

History. Acts 1961, No. 414, § 19; 1965, No. 434, § 1; 1971, No. 258, § 2; A.S.A. 1947, § 82-345; Acts 1989, No. 485, § 1; 1989, No. 665, § 1; 1993, No. 1238, §§ 1-3; 1999, No. 1181, § 10; 2005, No. 656, § 1; 2009, No. 216, §§ 1, 2; 2009, No. 357, § 2.

Amendments. The 2009 amendment by No. 216 inserted (e)(6)(A); and substituted "March 1" for "June 1" in (i).

The 2009 amendment by No. 357 added (n).

CASE NOTES

In General.

Judgment in favor of executrix of deceased nursing home facility resident's estate on claims brought under 20-10-1209(a)(1) against a management company and nursing home facility was reversed as to the management company because no license was issued to the management company; thus, under the plain language of this section, the management company was not a licensee subject to suit for violation of the resident's rights. Health Facilities Mgmt. Corp. v. Hughes, 365 Ark. 237, 227 S.W.3d 910 (2006).

20-10-229. Annual disclosure statement — Requirement.

(a) Any person, corporation, partnership, or facility seeking a license or renewal to provide long-term care in this state shall furnish a current annual disclosure statement to all residents upon request or to all prospective residents upon request.

(b) The statement shall be filed along with the annual application for licensure by March 1 of each year.

(c) The statement shall be on forms and in a format as prescribed by the Department of Human Services and shall include the following information:

(1) The name and business address of the facility and a statement as to whether the facility is a partnership, corporation, or other type of legal entity;

(2) The names and business addresses of the officers, directors, trustees, managing or general partners, or any persons having a five percent (5%) or greater equity or beneficial interest in or of the facility and a description of each person's interest in or occupation with the facility;

(3) A statement as to whether the facility, or any of its officers, directors, trustees, partners, or administrators, prior to the date of application:

(A) Has ever been convicted of Medicare or Medicaid fraud or felony;

(B) Has ever been convicted of fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(C) Has had final administrative judgment on any Class A or Class B long-term care violations within the last two (2) years;

(4) The location and description of the physical property or property of the facility;

(5) The disclosure statement shall clearly state which services are included in basic care contracts for long-term care and which services are available at or by the facility at extra charge; and

(6) A copy of the contract used by the facility.

History. Acts 1989, No. 664, § 1; 2009, No. 216, § 3.

Amendments. The 2009 amendment substituted "by March 1" for "during July" in (b).

20-10-230. Annual disclosure statement — Filing.

Each facility shall file the completed annual disclosure statement along with its annual license application by March 1 of each year and file a copy of the disclosure statement with the Department of Human Services county office in the county in which the facility is located.

History. Acts 1989, No. 664, § 1; 2009, No. 216, § 4.

Amendments. The 2009 amendment substituted "by March 1" for "during July."

Subchapter 9 — Arkansas Long-Term Care Facility Receivership Law

SECTION.

20-10-907. Emergency appointment.

20-10-907. Emergency appointment.

(a) If the complaint filed under § 20-10-905 is filed by the Department of Human Services and alleges that grounds set out in § 20-10-904(1) or (2) exist within a facility and is accompanied by a verified affidavit setting forth facts which would constitute such a ground, a temporary receiver shall be appointed with or without notice to the owner, licensee, or administrator.

(b) The temporary appointment of a receiver without notice to the owner, licensee, or administrator may be made only if the court is satisfied that the department has made a diligent attempt to provide reasonable notice under the circumstances. The delivery of a copy of the complaint to the facility upon filing shall constitute reasonable notice for issuance of a temporary receivership order by the court.

(c) Upon appointment of a temporary receiver, the department shall proceed immediately to obtain service as provided in § 20-10-905(d).

(d) If the department does not proceed with the complaint, the court shall dissolve the temporary receivership after ten (10) days.

History. Acts 1988 (4th Ex. Sess.), No. 3, § 1; 1988 (4th Ex. Sess.), No. 13, § 1; 2007, No. 827, § 152.

Amendments. The 2007 amendment added "or administrator" at the end of (a), and made related changes.

Subchapter 10 — Omnibus Long-Term Care Reform Act of 1988

SECTION.
20-10-1005. Procedure for transfer or discharge of residents — Violations.

20-10-1005. Procedure for transfer or discharge of residents — Violations.

(a) The Office of Long-Term Care shall prescribe through rule or regulation the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days prior to any involuntary transfer or discharge and for regulations setting forth the following circumstances for which the written notice need not be furnished:

(A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws and regulations; or

(F) The facility ceases to operate;

(2)(A) An appeals process for residents objecting to an involuntary transfer or discharge which places the burden of proof for justification of the transfer or discharge on the facility.

(B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.

(C) Unless otherwise agreed to by the parties:

(i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and

(ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the appeal process to be followed by the resident and the time periods in which:

(A) The resident must request an appeal;

(B) The appeal must be heard; and

(C) The earliest date a transfer would be allowed if the decision is against the resident.

(b) A request for a hearing shall stay a transfer pending a final determination.

(c) If the facility prevails and the final determination is not rendered within seven (7) days of the conclusion of the hearing, the Department of Human Services shall bear the cost of the resident's continued stay in the long-term care facility until such time as the decision is rendered.

(d) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(e) Failure to comply with the transfer or discharge procedures as prescribed by the office shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

History. Acts 1988 (4th Ex. Sess.), No. 17, § 1; 2001, No. 1763, § 1; 2007, No. 827, § 153.

Amendments. The 2007 amendment substituted "long-term care facility" for "nursing facility" in (c).

Subchapter 12 — Protection of Long-Term Care Facility Residents

20-10-1201. Purpose.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Health Law — The Arkansas Resident's Rights Statute and Civil Enforcement — Cutting Off Its Nose To Spite Its Face: How the Arkansas Resident's Rights Statute Is Defeating Its Purpose of Improving Quality of Care to Nursing Home Residents by Crippling the Nursing Homes Themselves. Health Facilities Management Corp. v. Hughes, 29 U. Ark. Little Rock L. Rev. 597.

CASE NOTES

Analysis

Applicability.
Statute of Limitations.

Applicability.

Based on review of Arkansas law, appellate court held that an Arkansas Long Term Care Resident's Rights Act, § 20-10-1201 et seq., claim, would be subject to a three year limitations period under § 16-56-105; for this and other reasons, an insurer had no duty to defend an operator of a nursing home, but it had a duty to defend the nursing home owner on all claims in the underlying lawsuit, and that its duty to indemnify the owner extended only to any judgment against it for breach of contract. Medical Liab. Mut. Ins. Co. v. Alan Curtis LLC, 519 F.3d 466 (8th Cir. 2008).

Statute of Limitations.

Based on review of Arkansas law, appellate court held that an Arkansas Long Term Care Resident's Rights Act, § 20-10-1201 et seq., claim, would be subject to a three year limitations period under § 16-56-105; for this and other reasons, an insurer had no duty to defend an operator of a nursing home, but it had a duty to defend the nursing home owner on all claims in the underlying lawsuit, and that its duty to indemnify the owner extended only to any judgment against it for breach of contract. Medical Liab. Mut. Ins. Co. v. Alan Curtis LLC, 519 F.3d 466 (8th Cir. 2008).

Cited: Deaver v. Faucon Props., Inc., 367 Ark. 288, 239 S.W.3d 525 (2006).

20-10-1204. Residents' rights.

CASE NOTES

Arbitration.

In a case in which a rehabilitation center moved to compel arbitration of an underlying state case for wrongful death pursuant to an arbitration clause in a nursing home admission agreement, a special administratrix's argument that the arbitration clause was an attempt to contract away the deceased's constitutional right to a jury was without merit. While § 20-10-1209(a)(3) provided that a resident of a long-term care facility could bring a cause of action against any licensee responsible for deprivation of enumerated rights, and that such action could be brought in any court of competent jurisdiction in the county in which the injury occurred or where the licensee is located, and one enumerated right, under subdivision (a)(8) of this section, was the right to receive adequate and appropriate health care, nothing in this section precluded an agreement to arbitrate disputes. Northport Health Servs. of Ark., LLC v. Robinson, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 6482 (W.D. Ark. Jan. 12, 2009).

20-10-1209. Civil enforcement.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Health Law — The Arkansas Resident's Rights Statute and Civil Enforcement — Cutting Off Its Nose To Spite Its Face: How the Arkansas Resident's Rights Statute Is Defeating Its Purpose of Improving Quality of Care to Nursing Home Residents by Crippling the Nursing Homes Themselves. Health Facilities Management Corp. v. Hughes, 29 U. Ark. Little Rock L. Rev. 597.

CASE NOTES

Analysis

In General.
Construction.
Arbitration.

In General.

Judgment in favor of executrix of deceased nursing home facility resident's estate on claims brought under subdivision (a)(1) of this section against a management company and nursing home facility was reversed as to the management company because no license was issued to the management company; thus, under the plain language of § 20-10-224, the management company was not a licensee subject to suit for violation of the resident's rights. Health Facilities Mgmt. Corp. v. Hughes, 365 Ark. 237, 227 S.W.3d 910 (2006).

Construction.

Jury verdict in favor of nursing home facility on the medical malpractice and wrongful death claims did not exonerated it from wrongdoing under the Arkansas Long-Term Care Facilities Code, § 20-10-224; even though the causes of action were tried together, the resident's-rights claim under subdivision (a)(1) of this section was a statutory claim separate and apart from the common-law claim of ordinary negligence, and the jury was entitled to reach conflicting results in relation to those claims. Health Facilities Mgmt. Corp. v. Hughes, 365 Ark. 237, 227 S.W.3d 910 (2006).

Arbitration.

In a case in which a rehabilitation center moved to compel arbitration of an underlying state case for wrongful death pursuant to an arbitration clause in a nursing home admission agreement, a special administratrix's argument that the arbitration clause was an attempt to contract away the deceased's constitutional right to a jury was without merit. While subdivision (a)(3) of this section

provided that a resident of a long-term care facility could bring a cause of action against any licensee responsible for deprivation of enumerated rights, and that such action could be brought in any court of competent jurisdiction in the county in which the injury occurred or where the licensee is located, and one enumerated right, under § 20-10-1204(a)(8), was the right to receive adequate and appropriate health care, nothing in § 20-10-1204 precluded an agreement to arbitrate disputes. Northport Health Servs. of Ark., LLC v. Robinson, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 6482 (W.D. Ark. Jan. 12, 2009).

Subchapter 13 — Nursing Home Resident and Employee Immunization

SECTION.
20-10-1301. Title.
20-10-1304. Implementation.
SECTION.
20-10-1305. Exemptions.

20-10-1301. Title.

This subchapter shall be known and may be cited as the "Nursing Home Resident and Employee Immunization Act of 1999".

History. Acts 1999, No. 1524, § 1; Acts 2007, No. 827, § 154.

Amendments. The 2007 amendment inserted "Resident."

20-10-1304. Implementation.

(a)(1)(A) The State Board of Health may promulgate rules and regulations to provide for the immunization against the influenza virus and pneumococcal disease as provided for in this subchapter.

(B) The Office of Long-Term Care shall be granted authority to enforce the rules and regulations.

(2) The board may also promulgate rules and regulations to provide for the immunization of other individuals and require other institutions and facilities to provide the immunizations provided for in this subchapter.

(b) Each nursing home facility in this state shall:

(1) Obtain consent from residents or their legal guardians upon admission to participate in all immunization programs that are conducted within the facility while that person is a resident of that facility, and not in violation of the resident's right to refuse treatment;

(2) As a condition of his or her employment, require each employee to participate in immunization programs conducted while he or she is employed at the facility, unless the employee meets the qualifications for exemptions as listed in § 20-10-1305; and

(3) Document and report annually immunizations against:

(A) Influenza virus for residents and full-time and part-time employees; and

(B) Pneumococcal disease for residents.

(c) Any nursing home facility which violates this subchapter shall be subject to suspension and revocation of its license.

(d)(1) The Department of Health shall provide vaccines, supplies, and staff necessary for the immunizations of nursing home residents and employees as provided for in this subchapter.

(2) However, during the outbreak of a pandemic disease, the department may enforce vaccine priorities necessary to limit the loss of life among citizens and to contain the spread of the disease.

History. Acts 1999, No. 1524, § 4; 2007, No. 815, § 1.

Amendments. The 2007 amendment added (d)(2).

20-10-1305. Exemptions.

All residents of nursing home facilities and all full-time and part-time employees of nursing home facilities shall be immunized according to this subchapter with the following exemptions:

(1) No individual shall be required to receive either an influenza virus vaccine or a pneumococcal pneumonia vaccine if the vaccine is medically contraindicated as described in the product labeling approved by the federal Food and Drug Administration; and

(2) The provisions of this subchapter shall not apply if the resident or legal guardian objects on the ground that the immunization conflicts with the religious tenets and practices of a recognized church or religious denomination of which the resident or guardian is an adherent or member.

History. Acts 1999, No. 1524, § 5; 2007, No. 827, § 155.

Amendments. The 2007 amendment substituted "residents of nursing home facilities and all full-time and part-time employees" for "residents or full-time or part-time employees" in the introductory language.

Subchapter 14 — Staffing Requirements for Nursing Facilities and Nursing Homes

SECTION.
20-10-1402. Staffing standards.
20-10-1403. Ratio of staff to residents.
SECTION.
20-10-1406. Posting of personnel numbers.

20-10-1402. Staffing standards.

(a) The Department of Human Services shall not issue or renew a license of a nursing facility unless that facility employs the direct-care staff needed to provide continuous twenty-four-hour nursing care and service to meet the needs of each resident of the nursing facility and the staffing standards required by all state and federal regulations.

(b)(1) Except for nursing facilities that the Office of Long-Term Care designates or certifies as Eden Alternative nursing facilities or Green House Project nursing facilities, the staffing standard required by this subchapter shall be the minimum number of direct-care staff required by nursing facilities and shall be adjusted upward to meet the care needs of residents.

(2)(A) The office shall promulgate staffing standards for nursing facilities that the office designates or certifies as Eden Alternative nursing facilities or Green House Project nursing facilities.

(B) The department may develop a reimbursement methodology or amend the reimbursement methodology in existence as of July 31, 2007, to provide payment for staff that provides services or care to residents in the designated or certified Eden Alternative nursing facilities or Green House Project nursing facilities.

(c) If a facility varies shift hours from the shift hours listed in § 20-10-1401, the facility shall meet the staffing requirements for the shift listed in § 20-10-1403.

History. Acts 1999, No. 1529, § 2; 2001, No. 1397, § 2; 2005, No. 1411, § 2; 2007, No. 192, § 1.

Amendments. The 2007 amendment, in (b), designated the existing provisions as (1), added (2), and added "Except for nursing facilities that the Office of Long-Term Care designates or certifies as Eden Alternative nursing facilities or Green House Project nursing facilities" at the beginning of (1) and made related changes.

20-10-1403. Ratio of staff to residents.

(a) Except for nursing facilities that the Office of Long-Term Care designates as Eden Alternative nursing facilities or Green House Project nursing facilities, all nursing facilities shall maintain the following minimum direct-care staffing-to-resident ratios:

(1) One (1) direct-care staff to every six (6) residents for the day shift. Of this direct-care staff, there shall be at least one (1) licensed nurse to every forty (40) residents;

(2) One (1) direct-care staff to every nine (9) residents for the evening shift. Of this direct-care staff, there shall be at least one (1) licensed nurse to every forty (40) residents; and

(3) One (1) direct-care staff to every fourteen (14) residents for the night shift. Of this direct-care staff, there shall be at least one (1) licensed nurse to every eighty (80) residents.

(b)(1) Licensed direct-care staff shall not be excluded from the computation of direct-care staff-to-resident ratios while serving in a staffing capacity that requires less education and training than is commensurate with their professional licensure.

(2) Licensed direct-care staff who serve in a staffing capacity that requires less education and training than is commensurate with their professional licensure shall not be restricted from providing direct-care services within the scope of their professional licensure in order to be included in the computation of direct-care staff-to-resident ratios.

(c) Nursing facilities shall provide in-service training to their direct-care staffs pursuant to regulations promulgated by the office.

(d) Upon any expansion of resident census by the facility, the facility shall be exempt from any increase in staffing ratios for a period of nine (9) consecutive shifts from the date of the expansion of resident census.

(e)(1) The computation of the direct-care minimum staffing ratios shall be carried to the hundredth place.

(2) If the application of the ratios listed in subsections (a)-(c) of this section results in other than a whole number of direct-care staff for a shift or shifts, the number of required direct-care staff shall be rounded

to the next higher whole number when the resulting ratio, carried to the hundredth place, is fifty-one hundredths (.51) or higher.

(3) In no event shall a facility have fewer than one (1) licensed nurse per shift for direct-care staff.

(4) All computations shall be based on the midnight census for the day in which the shift or shifts begin.

(f)(1) Facilities may vary the starting hour and the ending hour for up to twenty-five percent (25%) of the minimum direct-care staff of the day shift or the evening shift, or both, to meet resident care needs.

(2) Before varying the starting hour and the ending hour of direct-care staff of the day shift or the evening shift, the facility shall inform the office in writing of:

(A) The resident care needs to be met by the change in starting and ending times of the shift;

(B) The number of direct-care staff to whom the changes will apply;

(C) The starting hour and ending hour of the shift for the direct-care staff to whom the change will apply; and

(D) The length of time the variations will be used, if known.

(3)(A) The facility shall receive written approval from the office before the facility may vary the starting hour and ending hour of a shift for selected direct-care staff.

(B) The office may deny approval upon determination that:

(i) The reason for the request to vary the starting and ending time of a shift for selected direct-care staff does not meet resident care needs;

(ii) The facility was in a pattern of failure for any month in the three (3) months immediately preceding the request; or

(iii) The variation will result in a period of more than two (2) hours in which there is less than the minimum required number of direct-care staff under subsection (a) of this section.

(C) The office may revoke approval to vary the starting and ending time of a shift for selected direct-care staff if the office determines that:

(i) The approval has resulted in resident care needs being unmet; or

(ii) The facility is in a pattern of failure.

(4) If a facility varies the starting and ending times for direct-care staff of the day shift or the evening shift, or both, the facility shall be deemed to have met minimum staffing requirements for that shift if the number of direct-care staff whose starting and ending times are varied and the number of direct-care staff whose starting and ending times are not varied together equal the number of direct-care staff required for the shift.

History. Acts 1999, No. 1529, § 3; 2001, No. 1397, § 3; 2003, No. 1473, § 37; 2005, No. 1411, § 3; 2007, No. 192, § 2.

Amendments. The 2007 amendment added "Except for nursing facilities that the Office of Long-Term Care designates

as Eden Alternative nursing facilities or Green House Project nursing facilities" at the beginning of (a).

20-10-1406. Posting of personnel numbers.

(a)(1) Each nursing facility shall post daily at the beginning of each shift in a prominent place within twenty feet (20') of the main entrance of the nursing facility and in a location that is readily accessible and visible to residents and visitors the number of direct-care staff on duty at each shift.

(2) The posting shall consist of a sign-in sheet signed by each staff member as the staff member reports to work, and the staff member shall indicate on the sheet the time of arrival and departure, all halls, wings, or corridors on which the staff member worked or was assigned, and the total number of hours worked.

(3) The title of the posting shall be printed in a type no smaller than 18-point type.

(4) Below the posting, the nursing facility shall post a diagram of the facility showing the location of each hall, wing, or corridor.

(b) The current number of residents shall be posted and filed with the staffing report for the same time period.

(c) These records shall be filed and saved by the nursing facility until the next survey or for eighteen (18) months, whichever is greater, and these records shall be available for review by any interested person upon a written request.

History. Acts 1999, No. 1529, § 6; 2005, No. 1411, § 5; 2007, No. 282, § 1.

Amendments. The 2007 amendment divided (a) into (a)(1) and (a)(2) and added (a)(3) and (a)(4); substituted "daily at the beginning ... visible to residents and visitors" for "on each hall, wing, or corridor" in (a)(1); in (a)(2) substituted "time of arrival and departure" for "time of departure" and added "all halls, wings, or corridors on which the staff member worked or was assigned and the total number of hours worked"; substituted "number of residents shall be posted" for "number of residents on that unit shall be posted at the same place as the staffing report" in (b); in (c), deleted the first sentence and inserted "or for eighteen (18) months, whichever is greater"; and made related and stylistic changes.

Subchapter 16 — Quality Assurance Levy

SECTION.

20-10-1606. Waiver for nursing facilities that provide nursing care exclusively under life-care facility contracts.

20-10-1606. Waiver for nursing facilities that provide nursing care exclusively under life-care facility contracts.

(a) The Department of Human Services shall apply for a waiver of the uniform health care-related tax under 42 C.F.R. § 433.68, as in effect on January 1, 2007, to exempt each nursing facility that provides nursing care exclusively under contract with life-care facilities licensed under § 23-93-201 et seq. from the quality assurance fee and to allow

adjustment of the quality assurance fee paid by state-operated nursing facilities.

(b) Upon receiving the waiver, the department shall discontinue collecting the quality assurance fee from any nursing facility that provides nursing care exclusively under life-care facility contracts and adjust the quality assurance fee paid by state-operated nursing facilities pursuant to the waiver.

History. Acts 2007, No. 155, § 1.

Subchapter 17 — Arkansas Assisted Living Act

20-10-1702. Purpose and intent.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-10-1703. Definitions.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-10-1704. Assisted living program.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-10-1707. Licensure.

CASE NOTES

Cited: Ark. Residential Assisted Living Ass'n v. Ark. Health Servs. Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

20-10-1709. Permit of approval.

CASE NOTES

In General.

Arkansas Supreme Court rejected the claim by nursing facility association that permits of approval for residential-care facilities had to be counted as permits of approval for assisted-living facilities; therefore, regulation 500M of the Health Services Permit Commission was not invalid because it did not conflict with this section, and the decision to issue and abide by regulation 500M was not arbitrary as the commission and the Health Services Permit Agency engaged in significant research and analysis before issuing regulation 500M. Ark. Residential Assisted Living Ass'n v. Ark. Health Servs.

Permit Comm'n, 364 Ark. 372, 220 S.W.3d 665 (2005).

Subchapter 19 — Dispute Resolution for Long-Term Care Facilities

SECTION.
20-10-1902. Definitions.
20-10-1906. Scheduling informal dispute resolution hearings — Submission of documentary evidence.
20-10-1907. Informal dispute resolution hearing — Conduct.

20-10-1902. Definitions.

As used in this subchapter:

(1) "Deficiency" means a violation or alleged violation by a long-term care facility of applicable state or federal laws, rules, or regulations governing the operation or licensure of a long-term care facility;

(2) "Deficiency tag number" means an alphanumeric designation of a deficiency by the Office of Long-Term Care that denotes the applicable state or federal rule, regulation, or law allegedly violated and that is used on the statement of deficiencies;

(3)(A) "Impartial decision maker" means an individual employed by a state agency to conduct an informal dispute resolution hearing for the agency.

(B) "Impartial decision maker" does not include an individual who is presently or has been within the previous twenty-four (24) months actively involved in any survey process under the Department of Human Services;

(4) "Informal dispute resolution" means a nonjudicial process or forum before an impartial decision maker that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency;

(5) "Long-term care facility" has the same meaning as under § 20-10-213;

(6) "Party" means a facility requesting an informal dispute resolution hearing or the office, or both;

(7) "State survey agency" means the office, the federally designated state entity that performs Medicaid and Medicare surveys and inspections of Arkansas long-term care facilities; and

(8)(A) "Statement of deficiencies" means a statement prepared by the office citing the applicable state or federal laws, rules, or regulations violated by a long-term care facility and the facts supporting the citation.

(B) A statement of deficiencies may also be referred to as a "2567".

History. Acts 2003, No. 1108, § 1; 2011, No. 1144, § 1.

Amendments. The 2011 amendment inserted (3)(B).

20-10-1906. Scheduling informal dispute resolution hearings — Submission of documentary evidence.

(a)(1) Upon receipt of a request for an informal dispute resolution hearing from a facility, the Department of Health shall assign the matter to an impartial decision maker.

(2) If a deficiency in dispute concerns a pharmacy, a pharmacist, a pharmacy tag, or a deficiency where the expertise of a pharmacist is required, the informal decision maker shall:

(A) Be a pharmacist if the informal decision maker is a single individual; or

(B) Include a pharmacist if the informal decision maker is a group of individuals.

(b) The impartial decision maker shall:

(1) Schedule a time and date for a hearing; and

(2) Inform the parties of the time and date of the hearing.

(c) If the request for an informal dispute resolution hearing includes a request by the facility for a hearing at which the facility may appear before the impartial decision maker, the impartial decision maker shall:

(1) Arrange for facilities appropriate for conducting the hearing; and

(2) Inform the parties of the location of the facility.

(d)(1) Each party shall submit to the impartial decision maker all documentary evidence that the party believes has a bearing on or relevance to the deficiencies in dispute by the date specified by the impartial decision maker.

(2) Documentary evidence that is not submitted by the date specified by the impartial decision maker may be:

(A) Refused and not considered by the impartial decision maker; or

(B)(i) Accepted by the impartial decision maker.

(ii) If the evidence is accepted, the impartial decision maker shall provide the opposing party the opportunity to submit additional documentary evidence.

(iii) However, the additional evidence shall be limited to information that addresses or rebuts the documentary evidence submitted after the date specified by the impartial decision maker.

(e)(1) If the request for an informal dispute resolution hearing does not include a request by the facility for a hearing at which the facility may appear before the impartial decision maker, or upon agreement of the facility and the Office of Long-Term Care, the impartial decision maker may conduct the hearing by telephone conference call or by a review of documentary evidence submitted by the parties.

(2)(A) If the informal dispute resolution hearing is conducted by record review, the impartial decision maker may request, and the parties shall provide, a written statement setting forth the parties' positions for accepting, rejecting, or modifying each deficiency in dispute.

(B) The written statement shall specify the documentary evidence that supports the position of each party for each deficiency in dispute.

(C) The facility shall provide its written statement to the impartial decision maker and the office.

(D) The office shall then provide its written statement in rebuttal to the impartial decision maker and the facility.

History. Acts 2003, No. 1108, § 1; 2011, No. 1144, §§ 2, 3.

Amendments. The 2011 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a)(1); inserted (a)(2); and substituted "impartial decision maker" for "impartial hearing officer" in (e)(2)(A).

20-10-1907. Informal dispute resolution hearing — Conduct.

(a) Unless the facility chooses another order of presentation of arguments:

(1) The Office of Long-Term Care shall present the initial arguments at the hearing; and

(2) After the office completes its arguments, the facility shall present its arguments.

(b)(1) As a matter of fairness to all parties, the impartial decision maker shall determine in conjunction with all parties:

(A) The appropriate time needed for each presentation of information and argument; and

(B) The sequence and appropriate time for each rebuttal argument.

(2) However, the impartial decision maker may grant each party additional equal time for good cause as determined by the impartial decision maker in conjunction with all parties.

(c)(1) Rules of evidence or procedure shall not apply except as provided in this section.

(2) The impartial decision maker may:

(A) Accept any information that the impartial decision maker deems material to the issue being presented; and

(B) Reject any information that the impartial decision maker deems immaterial to the issue being presented.

(d)(1) The hearing may not be recorded.

(2) However, the impartial decision maker may make written or recorded notes of the arguments.

(e) Only employees of the facility, attending physicians of residents of the facility at the time of the deficiency, pharmacists providing medications to residents of the facility at the time of the deficiency, and consultant pharmacists or nurse consultants utilized by the facility, or the medical director of the facility may appear or participate at the hearing for or on the behalf of the facility.

(f) Only employees of the office may appear or participate at the hearing for or on behalf of the office.

(g) A person authorized under subsection (e) or (f) of this section to participate in the hearing may present direct questions to an opposing participant during the rebuttal argument.

(h)(1) Within fourteen (14) days of a final decision concerning the issues presented in the hearing and any related matters, the Department of Health shall provide the parties with a report concerning the hearing, all decisions made on the basis of the hearing, and any related matters.

(2) The report required under subdivision (h)(1) of this section shall include without limitation:

(A) Information concerning any change to the disputed deficiency; and

(B) A listing of each specific item of the deficiency and all changes made to the deficiency.

(i)(1) The Department of Human Services shall compile and make available to all facilities subject to this section a quarterly report that shall include without limitation the number of informal dispute resolutions during the previous quarter that were:

(A) Heard;

(B) Decided in favor of the state agency; and

(C) Decided in favor of the facility.

(2) The office shall review the reports under subdivision (i)(1) of this section and shall:

(A) Determine what patterns of sustained and overturned deficiencies exist; and

(B) Evaluate the training process to address the identified patterns.

(j) A party shall not be represented by an attorney.

History. Acts 2003, No. 1108, § 1; 2011, No. 1144, § 4.

Amendments. The 2011 amendment rewrote (a) and (b)(1); in (b)(2), substituted "impartial decision maker" for "impartial hearing officer" and added "in conjunction with all parties"; and inserted present (g) through (i) and redesignated the remaining subsection as (j).

Subchapter 21 — Arkansas Options Counseling for Long-Term Care Program

SECTION.
20-10-2101. Definitions.
20-10-2102. Admissions.
20-10-2103. Arkansas Options Counseling for Long-Term Care Program — Creation — Administration.
20-10-2104. Eligibility.
20-10-2105. Consultations — Timing — Content — Reporting.
20-10-2106. Rules.
20-10-2107. Fees.

20-10-2101. Definitions.

As used in this subchapter:

(1) "Long-term care facility" means a nursing facility or a licensed level II assisted living facility;

(2) "Medicaid" means the medical assistance program established under § 20-77-101 et seq.;

(3) "Nursing facility" has the same meaning as in § 20-10-1401;

(4) "Options counseling for long-term care" means the process of providing service under the Arkansas Options Counseling for Long-Term Care Program; and

(5) "Representative" means a family member, attorney, hospital social worker, or any other person chosen by an individual to act on behalf of the individual:

(A) Seeking a long-term care consultation; or

(B) Admitted to a long-term care facility January 1, 2008, or later.

History. Acts 2007, No. 516, § 1.

20-10-2102. Admissions.

(a) A long-term care facility shall notify the Office of Long-Term Care no later than the next business day of all admissions.

(b) Notification shall be made in the manner prescribed by the office.

History. Acts 2007, No. 516, § 1.

20-10-2103. Arkansas Options Counseling for Long-Term Care Program — Creation — Administration.

(a) The Arkansas Options Counseling for Long-Term Care Program is created within the Department of Human Services.

(b) The program shall provide individuals or their representatives, or both, with long-term care consultations that shall include information about, at a minimum:

(1) Long-term care options and costs;

(2) An assessment of an individual's functional capabilities; and

(3) The conduct of all or part of a professional review, assessment, and determination of appropriate long-term care options.

(c) The program shall be administered by the department.

History. Acts 2007, No. 516, § 1.

20-10-2104. Eligibility.

Each individual in the following categories may be provided with an options counseling for long-term care consultation:

(1) An individual admitted to a long-term care facility regardless of payment source;

(2) A long-term care facility resident who applies for Medicaid; and

(3) An individual who requests a long-term care consultation.

History. Acts 2007, No. 516, § 1.

20-10-2105. Consultations — Timing — Content — Reporting.

(a) An options counseling for long-term care consultation required under this subchapter may be provided at any time, including either

before or after the individual who is the subject of a long-term care consultation has been admitted to a long-term care facility.

(b) The information provided through a long-term care consultation under this subchapter shall address all of the following:

(1) The availability of long-term care options that are open to the individual;

(2) Sources and methods of both public and private payment for long-term care services;

(3) Factors to consider when choosing among the available programs, services, and benefits; and

(4) Opportunities and methods for maximizing the independence and self-reliance of the individual, including support services provided by the individual's family, friends, and community.

(c) An individual's long-term care consultation may include an assessment of the individual's functional capabilities and may be provided concurrently with any assessment required by the Department of Human Services.

(d)(1) At the conclusion of an individual's long-term care consultation, the department shall provide the individual or the individual's representative with a summary of options and resources available to meet the individual's needs.

(2) Even though the summary may specify that a source of long-term care other than care in a long-term care facility is appropriate and available, the individual is not required to seek an alternative source of long-term care and may be admitted to or continue to reside in a long-term care facility.

History. Acts 2007, No. 516, § 1.

20-10-2106. Rules.

The Director of the Department of Human Services shall adopt rules necessary to implement and administer this subchapter, including without limitation:

(1) Procedures for a long-term care facility to notify the Office of Long-Term Care of admissions; and

(2)(A) Procedures by which a person in a long-term care facility may decline options counseling for long-term care.

(B)(i) These procedures shall include a form promulgated by the Department of Human Services for use by a long-term care facility.

(ii) The form shall be limited to one (1) page and shall:

(a) Be orally read to the resident or, if applicable, the resident's representative by long-term care facility staff except as provided in this subdivision (2)(B)(ii);

(b) List the date;

(c) State the name of the resident or, if applicable, the resident's representative;

(d) Contain checkboxes indicating that:

(1) The office was notified of the admission;

(2) The form was not read orally to the resident or resident's representative because the resident lacks decisional capacity and does not have a representative; and

(3) The resident or the resident's representative declined the options counseling for long-term care;

(e) Contain a statement and an acknowledgment that options counseling for long-term care is an optional program and may be declined by execution of the form;

(f) Be signed by the resident or, if applicable, the resident's representative; and

(g) Be retained by the long-term care facility in the resident's admission file for eighteen (18) months or until the next standard survey, whichever is longer.

History. Acts 2007, No. 516, § 1; 2009, No. 952, § 2.

Amendments. The 2009 amendment redesignated (2)(B) and made related changes.

20-10-2107. Fees.

(a) After the first three (3) failures of a long-term care facility to complete the form required under § 20-10-2106 in any calendar year, the Department of Human Services shall assess a fee against the long-term care facility of twenty-five dollars ($25.00) for each failure beyond three (3), with an annual maximum fee of one thousand two hundred dollars ($1,200).

(b) A long-term care facility assessed a fee under this section may appeal the assessment under § 20-10-208.

History. Acts 2007, No. 516, § 1.

Subchapter 22 — Long-Term Care Quality Assurance

SECTION.
20-10-2201. Purpose — Findings.
20-10-2202. Applicability — Scope.
20-10-2203. Liability of Quality Assurance Committee members — Construction.
20-10-2204. Proceedings and records confidential.
20-10-2205. Duty to advise Quality Assurance Committees.

20-10-2201. Purpose — Findings.

(a) The purpose of the Quality Assurance Committee in a long-term care facility is to evaluate and improve the quality of health care rendered to residents of the facility.

(b) The General Assembly finds that:

(1) Confidentiality of committee proceedings and records is key to improving the quality of care in long-term care facilities by promoting thorough and candid discussions for a full review and analysis of care processes; and

(2) The work of the committee is an ongoing process in which individuals from various disciplines meet as a committee to:

(A) Ensure that current practice standards are maintained;

(B) Prevent deviations from care practices to the extent possible;

(C) Track, trend, and identify care concerns; and

(D) Correct inappropriate care processes.

History. Acts 2009, No. 198, § 1.

20-10-2202. Applicability — Scope.

(a) This subchapter applies to long-term care facilities as those entities are defined in § 20-10-101.

(b) This subchapter does not expand, limit, or constrict any other privilege, particularly a privilege under § 20-9-502, § 20-9-503, or § 16-46-105.

History. Acts 2009, No. 198, § 1.

20-10-2203. Liability of Quality Assurance Committee members — Construction.

(a) A cause of action for damages or monetary liability shall not arise against a member of the Quality Assurance Committee for an act or proceeding undertaken or performed within the scope of the functions of the committee if the committee member acts without malice or fraud.

(b) This subchapter does not confer immunity from liability on an individual while performing services other than as a member of a committee.

History. Acts 2009, No. 198, § 1.

20-10-2204. Proceedings and records confidential.

(a)(1) A long-term care facility may appoint members to serve as a duly appointed Quality Assurance Committee in which individuals from various disciplines meet as a committee to:

(A) Ensure that current practice standards are maintained;

(B) Prevent deviations from care practices to the extent possible;

(C) Track, trend, and identify care concerns; and

(D) Correct inappropriate care processes.

(2)(A) The proceedings of and records that are created by or for the committee of a long-term care facility are not subject to discovery or introduction into evidence in a civil action against a provider of professional health services arising out of the matters that are subject to evaluation and review by the committee.

(B) Appointments to the committee and the dates of the meetings shall be documented and maintained.

(3)(A) A long-term care facility may retain a professional consultant to assist the committee in studying quality-of-care concerns.

(B) Any oral or written reports of the consultants to the committee are privileged and not subject to discovery or introduction into evidence in a civil action against a provider of professional health services.

(C) Oral or written communications privileged under this section may be used by the consultant without waiver of the privilege.

(4) A person who was in attendance at a meeting of the committee shall not be permitted or required to testify in a civil action as to the following:

(A) Evidence or other matters produced or presented during the proceedings of the committee; or

(B) Findings, recommendations, evaluations, opinions, or other actions of the committee or any members of the committee made or taken in the quality assurance role.

(b)(1) This section does not apply to or affect the discovery or admissibility into evidence in a civil proceeding of the following records:

(A) Records or reports made in the regular course of business by a long-term care facility or other health care provider that are not created by or for the committee;

(B) Records or reports otherwise available from original sources, including without limitation the medical record of specific residents;

(C) Records or reports required to be kept by applicable law or regulation that are not created by or for the committee;

(D) Incident and accident reports;

(E) The long-term care facility's operating budgets; or

(F) Records of the committee's meeting dates.

(2) Without waiving any privilege, appointments to the committee are available to the Attorney General's Medicaid Fraud Control Unit.

(3) A person who testifies before the committee or who is a member of the committee shall not be prevented from testifying as to matters within his or her knowledge, but the witness shall not be asked about his or her testimony before the committee or about opinions formed by him or her as a result of the committee hearings.

History. Acts 2009, No. 198, § 1.

20-10-2205. Duty to advise Quality Assurance Committees.

Upon a request of a Quality Assurance Committee reviewing care provided in a long-term care facility, a physician, administrator, nurse, certified nurse's aide, nurse's aide-in-training, or other individual engaged in work in or about the long-term care facility and having information or knowledge relating to the care provided in the long-term care facility shall advise the committee concerning all the relevant facts or information possessed by the individual concerning the quality of care provided in the long-term care facility.

History. Acts 2009, No. 198, § 1.

Subchapter 23 — Personal Care Service Providers

SECTION.
20-10-2301. Purpose and intent.
20-10-2302. Definitions.
20-10-2303. Private care agencies eligible for Medicaid reimbursement.
20-10-2304. Rules and regulations.

20-10-2301. Purpose and intent.

(a) The General Assembly recognizes that in order to provide for appropriate health care for all Arkansans:

(1) Personal care service providers are a vital component in the recovery from an illness or an injury;

(2) Sufficient personal care service providers should be available to meet the needs of all eligible recipients; and

(3) Personal care service providers should be allowed to provide in-home personal care service to eligible recipients twenty-four (24) hours a day and seven (7) days a week.

(b) It is the purpose of this subchapter to:

(1) Allow a private care agency to provide in-home personal care services twenty-four (24) hours a day and seven (7) days a week to eligible recipients;

(2) Provide for the reimbursement of the personal care services through Medicaid; and

(3) Authorize the Department of Human Services in its administration of the Arkansas Medicaid Program to set forth Medicaid provider participation requirements for a private care agency that will ensure sufficient available personal care service providers in order to meet the needs of all eligible recipients, including available in-home personal care services twenty-four (24) hours a day and seven (7) days a week.

(c) This subchapter does not supersede Department of Human Services rules that establish monthly benefit limits and prior authorization requirements.

(d) The Department of Human Services is not required to reimburse a private care agency for twenty-four-hour-a-day and seven-day-a-week personal care services.

History. Acts 2009, No. 5, § 1.

20-10-2302. Definitions.

As used in this subchapter, "private care agency" means a provider that is licensed by the Department of Labor and certified as an ElderChoices Provider and that:

(1) Furnishes in-home staffing services for personal care services that include without limitation respite services, chore services, and homemaker services; and

(2) Retains liability insurance of not less than one million dollars ($1,000,000) to cover its employees and independent contractors while

its employees and independent contractors are engaged in providing personal care services that include without limitation respite services, chore services, and homemaker services.

History. Acts 2009, No. 5, § 1.

20-10-2303. Private care agencies eligible for Medicaid reimbursement.

The Division of Medical Services of the Department of Human Services shall take such action as required by the Centers for Medicare & Medicaid Services to amend the Arkansas Medicaid manual to include private care agencies that provide personal care services twenty-four (24) hours a day and seven (7) days a week as a qualified health care provider that is eligible for Medicaid reimbursement.

History. Acts 2009, No. 5, § 1.

20-10-2304. Rules and regulations.

(a) The State Board of Health shall promulgate rules necessary to implement this subchapter.

(b) To be eligible for reimbursement under this subchapter, the private care agency shall provide personal care services that comply with rules promulgated by the board.

(c) The board shall establish a separate licensure category for private care agencies that provide personal care services twenty-four (24) hours a day and seven (7) days a week.

(d) The Department of Health shall implement the board's rules and supervise the conduct of the private care agencies as defined under this subchapter.

History. Acts 2009, No. 5, § 1.

CHAPTER 13

EMERGENCY MEDICAL SERVICES

SUBCHAPTER.

1. General Provisions.
2. Emergency Medical Services Act.
4. Insect Sting and Other Allergic Reactions Emergency Treatment Act.
8. Trauma System Act.
10. Ambulance Services.
11. Criminal Records Check.
13. Public Access to Automated External Defibrillation Act.
14. Emergency Contraception for Victims of Sexual Assault.
15. Protection from Life-Threatening Disease.

Subchapter 1 — General Provisions

SECTION.
20-13-102. Use of special terms or abbreviations without certificate unlawful.
20-13-103. Grant requests — Division and use of funds.
20-13-105. Antony Hobbs III Task Force on Automated External Defibrillators.

Effective Dates. Acts 2009, No. 1386, § 34: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2009 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2009 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2009."

20-13-102. Use of special terms or abbreviations without certificate unlawful.

(a) It is unlawful for any person to practice or profess to be emergency medical services personnel or to use the initials "EMT", Advanced EMT, Paramedic, EMS-Instructor, EMS Instructor Trainer, or any other letters, words, abbreviations, or insignia indicating that he or she is emergency medical services personnel without first having obtained from the Department of Health a license authorizing the person to practice emergency medical services in this state.

(b) However, this section does not prohibit any person licensed under any other act in this state from engaging in the practice for which he or she is licensed nor to prevent students who are enrolled in accredited EMT, Advanced EMT, Paramedic, EMS-Instructor, or EMS Instructor Trainer education programs from performing acts of emergency medical services incidental to their courses of study.

History. Acts 1985, No. 1001, § 6; A.S.A. 1947, § 82-3421; Acts 2009, No. 689, § 5.

Amendments. The 2009 amendment, in (a), substituted "emergency medical services personnel" for "emergency medical technician" in two places, substituted "Advanced EMT, Paramedic, EMS-Instructor, EMS Instructor Trainer" for "'EMT', 'EMT-A', 'EMT-P', 'EMT-I', 'EMT-Instructor,'" and substituted "Department of Health a license" for "Division of Health of the Department of Health and Human Services a certificate"; substituted "Advanced EMT, Paramedic, EMS-Instructor, or EMS Instructor Trainer" for "EMT-I, or EMT-P" in (b); and made related and minor stylistic changes.

20-13-103. Grant requests — Division and use of funds.

(a) Grant requests for funds from the Emergency Medical Services Enhancement Revolving Fund shall be reviewed by the Emergency Medical Services Advisory Council specified in § 20-13-205 and recommendations for recipients of grant funds made to the Division of Emergency Medical Services of the Department of Health.

(b)(1) The grant funds shall be evenly divided between the public, private, and volunteer sectors.

(2) For the purposes of this subsection, the public sector shall include only those applicants having paid employees.

(c) The grant funds may be used to purchase or fund:

(1)(A) Ambulances for use in providing emergency medical services to the residents of Arkansas.

(B) Ambulances purchased with these funds shall meet the standards for and be registered at the I-A level or a higher level by the division;

(2)(A) Rescue vehicles for use in providing advanced life support or basic life support emergency care.

(B) Any vehicle purchased for advanced life support shall meet the standards for and be registered at the advanced rescue level by the division;

(3) Equipment required on ambulances or required to provide advanced life support or basic life support rescue services;

(4)(A) Training that leads to Arkansas licensure as emergency medical services personnel at the basic or advanced levels.

(B) Failure to obtain licensure shall result in the repayment of funds by the grantee; or

(5) Emergency medical services-related training approved by the division.

(d)(1) The funds may only be used to improve services by increasing the capability and skills of emergency medical services.

(2) Funds may not be used to maintain present status, pay salaries or daily operating expenses, contract for services, or purchase real property.

(e) The funds may not be used for new services at a lower level than an existing licensed service which has been in operation for more than one (1) year in the service area.

(f)(1) All property purchased with the funds shall be returned to the division if the licensed ambulance service ceases operations.

(2) The division shall make every effort to redistribute returned property and supplies to the replacement service or other eligible existing services within the same county.

(3) Should no eligible service exist or another eligible service not be established in the county within one (1) year, all purchases shall be redistributed by the division as needed.

(g)(1) Any vehicle or equipment purchased with these funds shall be used for its intended purpose for at least three (3) years from its date of purchase.

(2) Vehicles or equipment damaged or worn out within the three-year period shall be replaced with a like or better item at the grantee's expense.

History. Acts 1995, No. 1271, § 2; 2009, No. 689, § 6.

Amendments. The 2009 amendment, in (c), subdivided (c)(1) and (c)(2), made a minor stylistic change in (c)(1)(B), substituted "licensure as emergency medical services personnel" for "certification as an emergency medical technician" in (c)(4)(a), and substituted "licensure" for "certification" in (c)(4)(B)

Cross References. EMS Enhancement Revolving Fund, § 19-5-1078.

20-13-105. Antony Hobbs III Task Force on Automated External Defibrillators.

(a) There is created the Antony Hobbs III Task Force on Automated External Defibrillators.

(b) The task force shall consist of seven (7) members appointed as follows:

(1) Two (2) members appointed by the Speaker of the House of Representatives;

(2) Two (2) members appointed by the President Pro Tempore of the Senate; and

(3) Three (3) members appointed by the Governor.

(c) The Governor shall appoint a chair of the task force from among his or her appointees.

(d)(1) A majority of the membership of the task force shall constitute a quorum.

(2) A majority vote of those members present shall be required for any action of the task force.

(e) A vacancy arising in the membership of the task force shall be filled by appointment by the person or persons who appointed the vacating member.

(f) The Bureau of Legislative Research shall provide staff for the task force.

(g) The members of the task force shall serve without remuneration but may receive expense reimbursement and stipends under § 25-16-902, if funds are appropriated for that purpose by the General Assembly.

(h) The task force shall work with the Department of Education and the Department of Health to recommend rules for:

(1) Training and use of automated external defibrillators; and

(2) Other areas of need related to automated external defibrillators.

History. Acts 2009, No. 1386, § 31; 2011, No. 1121, § 1.

Amendments. The 2011 amendment substituted "task force" for "board" in (d)(2).

Subchapter 2 — Emergency Medical Services Act

SECTION.
20-13-202. Definitions.
20-13-205. Emergency Medical Services Advisory Council — Creation — Members.
20-13-206. Emergency Medical Services Advisory Council — Proceedings.
20-13-207. Emergency Medical Services Advisory Council — Powers and duties.
20-13-208. State Board of Health — Powers and duties.
20-13-211. Fees.
20-13-214. Military emergency medical personnel.

20-13-202. Definitions.

As used in this subchapter:

(1) "Air ambulance" means an aircraft, fixed or rotary wing, utilized for on-scene responses or transports deemed necessary by a physician and licensed by the Department of Health;

(2) "Air ambulance services" means those services authorized and licensed by the department to provide care and air transportation of patients;

(3) "Ambulance" means a vehicle used for transporting any person by stretcher or gurney upon the streets or highways of Arkansas, excluding vehicles intended solely for personal use by immediate family members;

(4) "Ambulance services" means those services authorized and licensed by the department to provide care and transportation of patients upon the streets and highways of Arkansas;

(5) "Board" means the State Board of Health;

(6) "Council" means the Emergency Medical Services Advisory Council;

(7) "Emergency medical services" means:

(A) The transportation and medical care provided the ill or injured before arrival at a medical facility by a licensed emergency medical services personnel or other health care provider; and

(B) Continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility;

(8)(A) "Emergency medical services personnel" means an individual licensed by the department at any level established by the rules adopted by the board under this subchapter and authorized to perform those services set forth in the rules.

(B) These shall include without limitation "EMT", Advanced EMT, Paramedic, Emergency Medical Services Instructor, or Emergency Medical Services Instructor Trainer;

(9) "Licensure" means official acknowledgment by the department that an individual has demonstrated competence to perform the emergency medical services required for licensure under the rules, regula-

tions, and standards adopted by the board upon recommendation by the Emergency Medical Services Advisory Council; and

(10) "Medical facility" means any hospital, medical clinic, physician's office, nursing home, or other health care facility.

History. Acts 1975, No. 435, § 2; 1981, No. 293, §§ 1, 2; 1985, No. 1001, § 1; A.S.A. 1947, § 82-3402; Acts 1987, No. 345, § 1; 1999, No. 60, § 1; 2009, No. 689, § 7.

Amendments. The 2009 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (1); deleted (6) and (8), which defined "certification" and "Division," respectively, inserted (9), and redesignated the remaining subdivisions accordingly; substituted "licensed emergency medical services personnel" for "certified emergency medical technician" in (7)(A); in (8)(A), substituted "'Emergency medical services personnel' means an individual licensed by the department" for "'Emergency medical technician' means an individual certified by the division" and deleted "and regulations" following "by the rules"; substituted "Advanced EMT, Paramedic, Emergency Medical Services Instructor, or Emergency Medical Services Instructor Trainer" for "'EMT', 'EMT-A', 'EMT-Instructor', 'EMT-Paramedic', and 'EMS-Communications'" in (8)(B); and made related and minor stylistic changes.

20-13-205. Emergency Medical Services Advisory Council — Creation — Members.

(a) There is created the Emergency Medical Services Advisory Council, which shall consist of nineteen (19) members with a demonstrated interest in emergency medical services, to be appointed by the Governor as follows:

(1) Four (4) members shall be licensed medical doctors of good professional standing. One (1) member shall be appointed representing each of the following areas:

(A) The Arkansas Chapter of the American College of Emergency Physicians;

(B) The Arkansas Academy of Family Physicians;

(C) The Arkansas Medical Society; and

(D) The medical director for a licensed Paramedic ambulance service;

(2) One (1) member recommended by the Arkansas Hospital Association;

(3) One (1) member who shall be a member of the Arkansas Emergency Department Nurses Association;

(4) One (1) member who shall be a member of, and recommended by, the Arkansas Ambulance Owners and Operators' Association;

(5) One (1) member who shall be a licensed Paramedic;

(6) One (1) member who shall be a licensed EMT;

(7) One (1) member representing fire department-based ambulance services;

(8) One (1) member representing emergency medical services personnel training sites who has had at least five (5) years' experience associated with emergency medical services personnel in this state;

(9) One (1) member who shall be a consumer representative who has an interest in public health and emergency medical services. The member shall be appointed by the Governor from the state at large;

(10) One (1) member who shall be sixty-five (65) years of age or more. This member shall be appointed by the Governor from the state at large and shall not belong to any other group specifically addressed in this section, with the exception of the consumer representative;

(11) One (1) member who shall represent city-based or county-based ambulance services;

(12) One (1) member who shall represent the Arkansas Association of Chiefs of Police or the Arkansas Sheriffs' Association;

(13) One (1) member representing fire service rescue operations which do not transport patients;

(14) One (1) member licensed as an attorney at law in good professional standing within this state and having a knowledge of medical and legal issues;

(15) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Medical Technicians Association; and

(16) One (1) member who shall be a certified military emergency medical technician.

(b) Members shall be appointed for terms of three (3) years.

(c) Vacancies on the council due to death, resignation, or other causes shall be filled by appointment by the Governor for the unexpired portion of the term thereof in the same manner as is provided in this section for initial appointments.

(d) Members except those employed by the state may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(e) The members may be removed by the Governor for neglect of duty or malfeasance in office.

History. Acts 1975, No. 435, § 3; 1985, No. 1001, § 2; A.S.A. 1947, § 82-3403; Acts 1997, No. 250, § 182; 2001, No. 1557, § 3; 2005, No. 1228, § 1; 2009, No. 689, § 8.

Amendments. The 2009 amendment, in (a), substituted "licensed Paramedic" for "certified EMT-Paramedic" in (a)(5), substituted "licensed EMT" for "certified EMT-Ambulance driver (a)(6), substituted "emergency medical services personnel" for "emergency medical technician" and "emergency medical services personnel" for "emergency medical technician training" in (a)(8); and made minor stylistic changes.

20-13-206. Emergency Medical Services Advisory Council — Proceedings.

(a) The Emergency Medical Services Advisory Council, within thirty (30) days after its appointment, shall organize as necessary to carry out its purposes as prescribed by this subchapter.

(b) Procedures adopted, amended, or repealed by the council shall require a majority vote of all council members.

(c)(1) At the initial organizational meeting of the council, the members shall elect from among their number a chair and a vice chair to serve for one (1) year.

(2) Annually thereafter, an organizational meeting shall be held to elect the officers.

(3) The Director of the Division of Emergency Medical Services of the Department of Health shall serve as the council's executive secretary.

(4) Seven (7) council members shall constitute a quorum.

(d) Quarterly meetings of the council may be held. Special meetings may be called as provided by the rules of the council.

(e)(1) The executive secretary shall keep full and true records of all council proceedings and preserve all books, documents, and papers relating to the business of the council.

(2) The records of the council shall be open for inspection at all reasonable times.

(f) The council shall report in writing to the Governor on or about July 31 of each year. The report shall contain a summary of the proceedings of the council during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the council, other information deemed necessary or useful, and any additional information which may be requested by the Governor.

History. Acts 1975, No. 435, § 4; A.S.A. 1947, § 82-3404; Acts 2007, No. 827, § 156.

Amendments. The 2007 amendment substituted "executive secretary" for "secretary of the council" in (e)(1).

20-13-207. Emergency Medical Services Advisory Council — Powers and duties.

(a) The Emergency Medical Services Advisory Council shall recommend for adoption by the board rules on all matters relating to emergency medical services, including without limitation:

(1) Standards for licensure of ambulance and advanced life support rescue personnel;

(2) Standards for equipment required on ambulance and advanced life support rescue vehicles;

(3) Standards for vehicles used in patient transportation and advanced life support rescue response, including communications requirements;

(4) A statewide communications system for emergency medical services;

(5) Operational standards for providers of ambulance and advanced life support rescue services, including reporting requirements and standards for air ambulance and air ambulance services; and

(6) Procedures for summoning and dispatching aid.

(b) The Department of Health shall have evidence that the standards imposed are important to the quality of patient care.

History. Acts 1975, No. 435, § 5; 1985, No. 1001, § 3; A.S.A. 1947, § 82-3405; Acts 1987, No. 345, § 2; reen. 1987, No. 1006, § 1; 2009, No. 689, § 9.

Amendments. The 2009 amendment, in (a), deleted "regulations, and standards" following "rules" in the introductory language, and substituted "licensure" for "certification" in (a)(1), and made related and minor stylistic changes.

20-13-208. State Board of Health — Powers and duties.

(a)(1) The State Board of Health shall have the responsibility and authority to hold public hearings and promulgate and implement rules, regulations, and standards which it deems necessary to carry out the provisions of this subchapter.

(2) However, before implementing any rules, regulations, or standards, the board shall submit and obtain the review of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees.

(b) In addition, the board may establish appropriate rules, regulations, and standards defining or limiting the emergency medical procedures or services that may be rendered by a licensed emergency medical services personnel who is authorized to legally perform these services under the conditions set forth by the board, except that before implementing any rules, regulations, and standards, the board shall submit and obtain the review of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees.

History. Acts 1975, No. 435, § 6; 1981, No. 293, § 3; A.S.A. 1947, § 82-3406; Acts 1997, No. 179, § 27; 2009, No. 689, § 10.

Amendments. The 2009 amendment subdivided (a); deleted "Interim" following "House" and "Senate" in (a)(2) and (b); substituted "licensed emergency medical services personnel" for "certified emergency medical technician" in (b); and made minor stylistic changes.

20-13-211. Fees.

The State Board of Health may establish the fees to be charged by the Department of Health to defray the cost of administering and enforcing this subchapter, as follows:

(1) The testing fee not to exceed the cost of administering the National Registry of Emergency Medical Technicians examination;

(2)(A) The licensure fee for emergency medical services personnel, which shall not exceed twenty dollars ($20.00).

(B) Ten dollars ($10.00) of the licensure fee shall be credited to the Emergency Medical Services Revolving Fund.

(C) The licensure shall be valid for two (2) years;

(3) The biennial renewal of the emergency medical services personnel licensure, which shall not exceed twenty dollars ($20.00). Ten dollars ($10.00) of the biennial renewal shall be credited to the Emergency Medical Services Revolving Fund;

(4) The issuance and annual renewal of an operational permit for each ambulance service, which shall not exceed fifty dollars ($50.00);

(5) The annual inspection and permitting of emergency vehicles, which shall not exceed five dollars ($5.00) per vehicle; and

(6) The issuance and renewal of an operational license for each air ambulance service, which shall not exceed one hundred dollars ($100).

History. Acts 1975, No. 435, § 7; 1985, No. 1001, § 5; A.S.A. 1947, § 82-3407; Acts 1987, No. 345, § 4; 2005, No. 648, § 1; 2009, No. 689, § 11.

Amendments. The 2009 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services which are deemed necessary" in the introductory language; subdivided (2), substituted "licensure" for "certification" in three places, and substituted "emergency medical services personnel" for "emergency medical technicians" in (2)(A); and substituted "emergency medical services personnel licensure" for "emergency medical technician certification" in (3).

20-13-214. Military emergency medical personnel.

(a) Military personnel who return to the State of Arkansas following active duty and who received emergency medical training on active duty shall be granted initial licensure from the Department of Health as emergency medical services personnel under this subchapter, upon proof from the military that the individual received emergency medical training while on active duty.

(b) Military personnel licensed under this section shall pay the fees for biennial renewal of the emergency medical services personnel license required under this subchapter.

History. Acts 2005, No. 1674, § 1; 2009, No. 689, § 12.

Amendments. The 2009 amendment, in (a), deleted "certification and" following "initial," substituted "Department of Health" for "Division of Health of the Department of Health and Human Services," and substituted "emergency medical services personnel" for "emergency medical technicians"; and in (b), substituted "emergency medical services personnel license" for "emergency medical technician certification" and made a minor stylistic change.

Subchapter 4 — Insect Sting and Other Allergic Reactions Emergency Treatment Act

SECTION.
20-13-401. Title.
20-13-402. Purpose.
20-13-404. Eligibility for certificate.
20-13-405. Authority of certificate holder.

20-13-401. Title.

This subchapter shall be known and cited as the "Insect Sting and Other Allergic Reactions Emergency Treatment Act".

History. Acts 1983, No. 436, § 1; A.S.A. 1947, § 82-4501; Acts 2009, No. 684, § 1.

Amendments. The 2009 amendment inserted "and Other Allergic Reactions."

20-13-402. Purpose.

It is the purpose of this subchapter to provide a means of authorizing certain individuals to administer treatment to those persons who have severe adverse reactions to insect stings and other allergic reactions when a physician is not immediately available.

History. Acts 1983, No. 436, § 2; A.S.A. 1947, § 82-4502; Acts 2009, No. 684, § 1.

Amendments. The 2009 amendment inserted "and other allergic reactions."

20-13-404. Eligibility for certificate.

Persons eligible to receive a certificate under this subchapter shall meet the following requirements:

(1) Be eighteen (18) years of age or older;

(2) Have, or reasonably expect to have, responsibility for at least one (1) other person as a result of one's relationship or occupational or volunteer status, for example, parents, camp counselors, scout leaders, schoolteachers, forest rangers, tour guides, or chaperones; and

(3)(A) Have been properly instructed by a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(B) The curriculum shall minimally include recognition of the symptoms of systemic reactions to insect stings and other allergic reactions and the proper administration of a subcutaneous injection of epinephrine.

History. Acts 1983, No. 436, §§ 4, 5; A.S.A. 1947, §§ 82-4504, 82-4505; Acts 2009, No. 684, § 2.

Amendments. The 2009 amendment subdivided (3) and inserted "and other allergic reactions" in (3)(B).

20-13-405. Authority of certificate holder.

(a) A certificate issued pursuant to this subchapter shall authorize the certificate holder to receive, upon presentation of the certificate, from any physician a prescription for premeasured doses of epinephrine and the necessary paraphernalia for administration.

(b) The certificate shall also authorize the certificate holder to possess and administer, in an emergency situation when a physician is not immediately available, the prescribed epinephrine to persons suffering a severe adverse reaction to an insect sting or other allergic reaction.

(c) The certificate holder may administer epinephrine as provided in this subchapter only to those persons for whom the holder is responsible as provided in § 20-13-404(2).

History. Acts 1983, No. 436, § 7; A.S.A. 1947, § 82-4507; Acts 2009, No. 684, § 3.

Amendments. The 2009 amendment inserted "and other allergic reactions" in (b).

Subchapter 8 — Trauma System Act

SECTION.
20-13-801. Title.
20-13-802. Legislative findings.
20-13-803. Definitions.
20-13-804. Powers and duties of the Department of Health.
20-13-805. Standards for verification of trauma center status.
20-13-806. Trauma data collection and evaluation system — Confidentiality of records.
20-13-807. Trauma Advisory Council.
20-13-808. Terms — Vacancies — Meetings — Rules.
20-13-809. Grants for emergency medical system care providers or ambulance providers.
20-13-810. Grants for Level I trauma centers.
20-13-811. Grants for Level II trauma centers.
20-13-812. Grants for Level III trauma centers.
20-13-813. Grants for Level IV trauma centers.
20-13-814. Grants for rehabilitation services.
20-13-815. Contracts with quality improvement organizations.
20-13-816. Grants for trauma regional advisory councils.
20-13-817. Command and communication networks.
20-13-818. Injury prevention programs.
20-13-819. Quality or system assessment and improvement.
20-13-820. Reports to the General Assembly.
20-13-821. Rules.

Effective Dates. Acts 2009, No. 393, § 2: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state incurs a massive expense from trauma in lives lost, productive years destroyed, and the emotional and monetary expense of caring for victims of trauma; that a coordinated and comprehensive system of trauma care has shown in other states to improve overall trauma problems; and that this act is immediately necessary because the current law must be amended to provide for a coordinated and comprehensive trauma system to ensure that all trauma victims have the greatest chance for survival and a reduced risk for permanently disabling injuries. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2009."

20-13-801. Title.

This subchapter is known and may be cited as the "Trauma System Act".

History. Acts 1993, No. 559, § 1; 2009, No. 393, § 1.

Amendments. The 2009 amendment substituted "is known and may be cited" for "shall be known and cited."

20-13-802. Legislative findings.

The General Assembly finds that:

(1) Traumatic injury is recognized as the leading killer of persons one (1) year to forty-four (44) years of age and is a serious yet preventable condition;

(2) Deaths due to trauma in the United States for 2005 were nearly one hundred thirty-nine thousand (139,000), and children nineteen (19) years of age or younger accounted for nearly twelve percent (12%) of the deaths;

(3) In 2006, two thousand one hundred nineteen (2,119) Arkansans lost their lives and twenty-five thousand three hundred eight (25,308) were admitted to hospitals due to trauma;

(4) The State of Arkansas incurs a massive expense from trauma in lives lost, productive years destroyed, and the emotional and monetary expense of caring for victims of trauma; and

(5) The experience of other states has shown that a comprehensive trauma system, including all phases of trauma care from prevention, prehospital care, and trauma center designation to rehabilitative care, can vastly improve overall trauma problems.

History. Acts 1993, No. 559, § 2; 2009, No. 393, § 1.

Amendments. The 2009 amendment inserted (2) and (3) and redesignated the remaining text accordingly; inserted the introductory language; substituted "condition" for "disease" in (1); and made related, stylistic and punctuation changes.

20-13-803. Definitions.

As used in this subchapter:

(1) "Department" means the Department of Health; and

(2) "EMS Division" means the Division of Emergency Medical Services of the Department of Health.

History. Acts 1993, No. 559, § 3; 2009, No. 393, § 1.

Amendments. The 2009 amendment rewrote (1); and substituted "Department of Health" for "Division of Health of the Department of Health and Human Service" in (2).

20-13-804. Powers and duties of the Department of Health.

(a) The Department of Health may develop and implement a comprehensive trauma care system that provides guidelines for the care of trauma victims and is fully integrated with all available resources, including, but not limited to, existing emergency medical services providers, hospitals, or other health care providers that would like to participate in the program.

(b)(1) The department shall allocate funds deposited into the Public Health Fund to administer this subchapter.

(2) The allocation of available funds shall be developed and modified with:

(A) The advice of the Trauma Advisory Council; and

(B) The approval of the State Board of Health.

(3) Allocations of funds in the form of grants or contracts from the funds deposited into the Public Health Fund to administer this subchapter may include, but are not limited to:

(A) Emergency medical system care providers and ambulance providers under § 20-13-809;

(B) Level I, Level II, Level III, and Level IV trauma centers under §§ 20-13-810 — 20-13-813;

(C) Rehabilitation service providers under § 20-13-814;

(D) Quality improvement organizations under § 20-13-815;

(E) Trauma regional advisory councils under § 20-13-816;

(F) Command communication networks under § 20-13-817; and

(G) Injury prevention programs under § 20-13-818.

(c) The funds deposited into the Public Health Fund to administer this subchapter will be used to fund two (2) general types of grants with entities necessary to administer this subchapter:

(1) Start-up trauma grants to support initial costs required to qualify for participation in the trauma care system; and

(2) Sustaining trauma grants to support ongoing readiness costs for continued participation in the trauma care system.

(d) The department may contract with entities as necessary to implement this subchapter.

History. Acts 1993, No. 559, § 4; 2009, No. 393, § 1.

Amendments. The 2009 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a); inserted (b); and redesignated the remaining subsection accordingly.

Cross References. Public Health Fund, § 19-5-307.

20-13-805. Standards for verification of trauma center status.

(a) The State Board of Health may adopt standards for designation and verification of trauma center status which assign level designations based on resources available within the facility.

(b)(1) Standards shall be based upon national guidelines, including those established by the American College of Surgeons entitled "Hospital and Prehospital Resources for Optimal Care of the Injured Patient" and published appendices thereto.

(2) Standards specific to address the unique nature of Arkansas may be developed and modified by rule of the board.

History. Acts 1993, No. 559, § 5; 2009, No. 393, § 1.

Amendments. The 2009 amendment redesignated the section; in (a), substituted "State Board of Health" for "Division of Health of the Department of Health and Human Services" and inserted "designation and"; and rewrote (b)(2), which read: "Standards specific to rural and urban areas shall be developed and adopted by rule of the division."

20-13-806. Trauma data collection and evaluation system — Confidentiality of records.

(a)(1) The Department of Health shall develop a trauma data collection and evaluation system known as the "Trauma Registry".

(2) The Trauma Registry shall be designed to study both the individual and collective care and treatment given to patients of the trauma system.

(b)(1) The department may collect, as deemed necessary and appropriate, data and information regarding patients treated and transported from the field, admitted to a facility through the emergency department, through a trauma center, or directly to a special care unit or post-hospitalization facility.

(2) Data and information shall be collected in a manner which protects and maintains the confidential nature of patient records.

(c) Records and reports made pursuant to this subchapter shall be held confidential within the hospital and department and shall not be available to the public.

(d) The department shall require all recipients of sustaining grants under this subchapter to participate in the state-specified Trauma Registry.

History. Acts 1993, No. 559, § 6; 2009, No. 393, § 1.

Amendments. The 2009 amendment subdivided (a) and (b); in (a), substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a)(1), and rewrote (a)(2), which read: The Trauma Registry shall be designed to study the trauma system to improve patient outcome and ensure compliance with standards of verification"; substituted "department" for "division" in (b)(1) and (c); in (b)(1), inserted "treated and transported from the field" and "or post-hospitalization facility"; added (d); and made a related change.

20-13-807. Trauma Advisory Council.

(a) There is established an advisory council, to be known as the "Trauma Advisory Council", for the purpose of making recommendations, advising, and providing assistance to the Department of Health concerning the development and operation of a statewide trauma system.

(b) The council shall consist of twenty (20) voting members who have a demonstrated interest in trauma systems to be appointed by the Governor as follows:

(1) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Chapter of the American College of Emergency Physicians;

(2) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Academy of Family Physicians;

(3) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Chapter of the American College of Surgeons;

(4) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Medical Society;

(5) Four (4) members appointed from a list of eight (8) nominees submitted by the Arkansas Hospital Association;

(6) One (1) member appointed from a list of two (2) nominees submitted by the Governor's Emergency Medical Services Advisory Council;

(7) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Nurses' Association;

(8) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Medical Technicians' Association;

(9) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Ambulance Association;

(10) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Emergency Medical Services for Children Program;

(11) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Trauma Society;

(12) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Society of Trauma Nurses;

(13) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Spinal Cord Commission;

(14) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Minority Health Commission;

(15) One (1) member appointed from a list of two (2) nominees submitted by the Arkansas Medical, Dental and Pharmaceutical Association;

(16) One (1) member appointed to represent injury prevention; and

(17) One (1) member appointed from the public at large as a consumer representative who has an interest in trauma systems.

(c) The council shall also include four (4) voting members who have a demonstrated interest in trauma systems to be appointed as follows:

(1) Two (2) members to be appointed by and to serve at the pleasure of the President Pro Tempore of the Senate; and

(2) Two (2) members to be appointed by and to serve at the pleasure of the Speaker of the House of Representatives.

(d) The following shall serve as nonvoting ex officio members of the council:

(1) The Director of the Department of Health or the director's designee; and

(2) The Director of the Department of Arkansas State Police or the director's designee.

History. Acts 1993, No. 559, § 7; 1995, No. 981, § 1; 2001, No. 1288, § 16; 2009, No. 393, § 1.

Amendments. The 2009 amendment, in (a), substituted "Department of Health" for "Division of Emergency Medical Services of the Division of Health of the Department of Health and Human Services," and inserted "and operation"; in (b), substituted "twenty (20) voting" for "twelve (12)" in the introductory language, substituted "Four (4) members" for "One (1) member" and "eight (8)" for "two (2)" in (b)(5), inserted "Medical" in (b)(8), inserted (b)(12) through (b)(16), redesignated the remaining subdivision accordingly, and made a related change; inserted (c) and redesignated the subsequent subsection; and rewrote (d).

20-13-808. Terms — Vacancies — Meetings — Rules.

(a) All voting members of the Trauma Advisory Council shall be appointed for terms of two (2) years.

(b)(1) If a vacancy occurs in an appointed position for any reason, the vacancy shall be filled in the manner provided for the original appointment under § 20-13-807.

(2) The new appointee shall serve for the remainder of the unexpired term.

(c) A member of the council shall be removed for conviction of a felony, for not attending fifty percent (50%) of the meetings in a calendar year, or if the member no longer meets the qualifications for his or her initial appointment.

(d)(1) The members of the council shall elect from their membership a chair, a vice chair, and a secretary, whose duties shall be those customarily exercised by those officers or duties specifically designated by the council.

(2) All officers shall serve for a period of two (2) years and until their successors are elected.

(e)(1) Thirteen (13) of the voting members of the council shall constitute a quorum for the purpose of transacting business.

(2) Except for actions taken pursuant to subsection (g) of this section, all actions of the council shall be made by a majority of all voting members.

(f) The council shall meet at least four (4) times a year but may meet more frequently upon the call of the chair or at the request, stated in writing, of a majority of the members of the council.

(g)(1) To assist in the expeditious conduct of its business when the full council is not meeting, the council may elect an executive committee.

(2) The chair, vice chair, and secretary of the council shall be members of the executive committee.

(3) The executive committee shall be constituted and shall function as provided in the bylaws of the council.

(h) The council shall establish its own rules of procedure.

History. Acts 1993, No. 559, § 8; 2007, No. 827, § 157; 2009, No. 393, § 1.

Amendments. The 2007 amendment substituted "designated by the council" for "designated by the board" in (b).

The 2009 amendment rewrote (a) and redesignated it as (a) and (b); inserted (c), (e), and (g) and redesignated the remaining subsections accordingly; in (d), substituted "secretary" for "secretary-treasurer" in (d)(1) and substituted "two (2) years" for "one (1) year" in (d)(2); and in (f), substituted "four (4)" for "two (2)" and "a majority of the" for "any seven (7)."

20-13-809. Grants for emergency medical system care providers or ambulance providers.

An emergency medical system care provider or ambulance provider may be eligible for:

(1) The emergency medical system care provider education start-up grants that are used to support trauma education and trauma readiness; or

(2) The emergency medical system care provider sustaining grants that are used to support ongoing trauma education and trauma readiness.

History. Acts 2009, No. 393, § 1.

20-13-810. Grants for Level I trauma centers.

(a)(1) An entity that meets the preliminary criteria for a Level I trauma center under the rules of the State Board of Health may be eligible for the Level I trauma center start-up grant that is used to qualify for the status of a Level I trauma center and for trauma readiness costs associated with the care of trauma patients.

(2) This grant may be awarded to entities that:

(A) Meet the preliminary criteria for Level I trauma center status as determined by the Department of Health; and

(B) Demonstrate the capability of fully achieving Level I trauma center status within eighteen (18) months.

(b)(1) An established Level I trauma center may be eligible for a sustaining grant if the Level I trauma center:

(A) Has achieved Level I trauma center status and is currently at Level I status; and

(B) Demonstrates continued capability to maintain Level I trauma center status.

(2) This grant may be an annual grant and may have an annual renewal process for Level I trauma centers that meet the criteria under this subsection.

History. Acts 2009, No. 393, § 1.

20-13-811. Grants for Level II trauma centers.

(a)(1) An entity that meets the preliminary criteria for a Level II trauma center under the rules of the State Board of Health may be eligible for the Level II trauma center start-up grant that is used to qualify for the status of a Level II trauma center and for trauma readiness costs associated with the care of trauma patients.

(2) This grant may be awarded to entities that:

(A) Meet the preliminary criteria for Level II trauma center status as determined by the Department of Health; and

(B) Demonstrate the capability of fully achieving Level II trauma center status within twelve (12) months.

(b)(1) An established Level II trauma center may be eligible for a sustaining grant if the Level II trauma center:

(A) Has achieved Level II trauma center status and is currently at Level II status; and

(B) Demonstrates continued capability to maintain Level II trauma center status.

(2) This grant may be an annual grant and may have an annual renewal process for Level II trauma centers that meet the criteria under this subsection.

History. Acts 2009, No. 393, § 1.

20-13-812. Grants for Level III trauma centers.

(a)(1) An entity that meets the preliminary criteria for a Level III Ttrauma center under the rules of the State Board of Health may be eligible for the Level III trauma center start-up grant that is used to qualify for the status of a Level III trauma center and for trauma readiness costs associated with the care of trauma patients.

(2) This grant may be awarded to entities that:

(A) Meet the preliminary criteria for Level III trauma center status as determined by the Department of Health; and

(B) Demonstrate the capability of fully achieving Level III trauma center status within twelve (12) months.

(b)(1) An established Level III trauma center may be eligible for a sustaining grant if the Level III trauma center:

(A) Has achieved Level III trauma center status and is currently at Level III status; and

(B) Demonstrates continued capability to maintain Level III trauma center status.

(2) This grant may be an annual grant and may have an annual renewal process for Level III trauma centers that meet the criteria under this subsection.

History. Acts 2009, No. 393, § 1.

20-13-813. Grants for Level IV trauma centers.

(a)(1) An entity that meets the preliminary criteria for a Level IV trauma center under the rules of the State Board of Health may be eligible for the Level IV trauma center start-up grant that is used to qualify for the status of a Level IV trauma center and for trauma readiness costs associated with the care of trauma patients.

(2) This grant may be awarded to entities that:

(A) Meet the preliminary criteria for Level IV trauma center status as determined by the Department of Health; and

(B) Demonstrate the capability of fully achieving Level IV trauma center status within twelve (12) months.

(b)(1) An established Level IV trauma center may be eligible for a sustaining grant if the Level IV trauma center:

(A) Has achieved Level IV trauma center status and is currently at Level IV status; and

(B) Demonstrates continued capability to maintain Level IV trauma center status.

(2) This grant may be an annual grant and may have an annual renewal process for Level IV trauma centers that meet the criteria under this subsection.

History. Acts 2009, No. 393, § 1.

20-13-814. Grants for rehabilitation services.

Grants may be awarded to providers, entities, or organizations with special competence in trauma rehabilitation services that provide rehabilitation services under this subchapter to trauma patients.

History. Acts 2009, No. 393, § 1.

20-13-815. Contracts with quality improvement organizations.

(a) An entity that meets the preliminary criteria for a quality improvement organization under the rules of the State Board of Health may contract with the Department of Health to develop, promulgate, and measure trauma quality measures for entities providing care for the trauma system under this subchapter.

(b) This contract may be awarded to entities that:

(1) Meet the preliminary criteria for a quality improvement organization as determined by the Department of Health; and

(2) Demonstrate the capability of providing to the trauma system, trauma centers, and other trauma care providers:

(A) The development of quality measures;

(B) The implementation of educational programs to trauma care providers related to quality measures and to improve the quality of care; and

(C) The gathering of data that can be used to measure the quality of care, outcomes, and utilization of resources.

History. Acts 2009, No. 393, § 1.

20-13-816. Grants for trauma regional advisory councils.

(a)(1) An entity that meets the preliminary criteria for a trauma regional advisory council under the rules of the State Board of Health may be eligible for recognition as a trauma regional advisory council.

(2) The Department of Health may establish a grant or provide technical assistance to entities that:

(A) Meet the preliminary criteria for a trauma regional advisory council as determined by the Department of Health; and

(B) Demonstrate the capability of satisfactorily developing, overseeing, and administering the trauma system plan for its region.

(b)(1) An established trauma regional advisory council may be eligible for a sustaining grant if the trauma regional advisory council:

(A) Has achieved the status as the trauma regional advisory council for its region of the trauma system and is currently providing

trauma planning and quality improvement services to its region of the trauma system; and

(B) Demonstrates continued capability to maintain its status as a trauma regional advisory council based on its performance in planning and overseeing the plan for its region of the trauma system.

(2) This grant may be an annual grant and have an annual renewal process for a trauma regional advisory council that meets the criteria under this subsection.

History. Acts 2009, No. 393, § 1.

20-13-817. Command and communication networks.

(a) The Department of Health shall ensure operation of a call center to facilitate communication and coordination of available resources.

(b) The call center shall direct patient transport of critical trauma patients to hospitals with the appropriate capability to provide optimum patient care.

(c) The department may contract with entities to provide command and communication networks.

History. Acts 2009, No. 393, § 1.

20-13-818. Injury prevention programs.

The Department of Health shall allocate funds to develop and promote injury prevention programs including the development of the capacity to track and describe the epidemiologic and health statistics of injury deaths and disabilities in Arkansas.

History. Acts 2009, No. 393, § 1.

20-13-819. Quality or system assessment and improvement.

(a)(1) Any data, records, reports, and documents collected or compiled by or on behalf of the Department of Health, the Trauma Advisory Council, or other entity authorized under this subchapter for the purpose of quality or system assessment and improvement of the trauma system shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., to the extent that it identifies or could be used to identify any individual patient, provider, institution, or health plan.

(2) For purposes of this section, "data, records, reports, and documents" means recordings of interviews and all oral or written proceedings, reports, statements, minutes, memoranda, data, and other documentation collected or compiled for the purposes of trauma system quality review or trauma system assessment and improvement pursuant to a requirement of or request by the department, the council, or other entity authorized by this chapter.

(b)(1) Any data, records, reports, and documents collected or compiled by or on behalf of the department, the council, or other entity

authorized under this subchapter for the purpose of quality or system assessment and improvement shall not be admissible in any legal proceeding and shall be exempt from discovery and disclosure to the same extent that records of and testimony before committees evaluating the quality of medical or hospital care are exempt under § 16-46-105(a)(1).

(2) A healthcare provider's use of the information in its internal operations shall not operate as a waiver of these protections.

(c) All information shall be treated in a manner that is consistent with all state and federal privacy requirements, including without limitation the federal Health Insurance Portability and Accountability Act of 1996 privacy rule, 45 C.F.R. § 164.512(i).

(d) The department or other entity authorized to provide services for the trauma system may use any data, records, reports, or documents generated or acquired in its internal operations without waiving any protections under this section.

History. Acts 2009, No. 393, § 1.

20-13-820. Reports to the General Assembly.

The Director of the Department of Health shall provide a report to the Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor on or before April 1 and October 1 of each year through 2011. After 2011, the director shall provide an annual report to each committee on or before October 1.

History. Acts 2009, No. 393, § 1.

20-13-821. Rules.

The State Board of Health shall promulgate the rules necessary to implement and administer this subchapter.

History. Acts 2009, No. 393, § 1.

Subchapter 10 — Ambulance Services

SECTION.

20-13-1003. Choice-of-care facility — Reporting requirements — Insurance coverage.

20-13-1003. Choice-of-care facility — Reporting requirements — Insurance coverage.

(a)(1)(A) A licensee under this subchapter may transport any patient to the care facility of the patient's choice if the licensee considers service area limitations and subject to applicable federal law and the licensee's local protocol.

(B) If the patient is unable to make a choice and if the attending physician is present and has expressed a choice-of-care facility, the licensee may comply with the attending physician's choice if the

licensee considers service area limitations and subject to applicable federal law.

(C) If the patient is unable to make a choice or if the attending physician is not present or has not expressed a choice of facility, the licensee may transport the patient to the nearest appropriate care facility and subject to applicable federal law.

(2) The licensee shall provide the care facility where the patient was transported with a copy of an ambulance service encounter form prescribed by the Department of Health, which shall become a part of the patient's medical records.

(b) Each licensee shall report in a format approved by the department every request that results in the dispatch of a vehicle.

(c)(1) Each licensee shall have in force and effect liability insurance coverage issued by an insurance company licensed to do business in the State of Arkansas for each vehicle owned and operated by or for the applicant or licensee.

(2) The department shall maintain evidence of proof of current liability insurance coverage for each vehicle of each licensee.

History. Acts 1997, No. 1255, § 3; 2009, No. 553, § 1.

Amendments. The 2009 amendment, in (a), substituted "may" for "shall" in (a)(1)(A), (a)(1)(B), and (a)(1)(C), substituted "if the licensee considers service area limitations and subject to applicable federal law and the licensee's local protocol" for "within the service area of the ambulance" in (a)(1)(A), in (a)(1)(B) deleted "within the service area" following "facility" and inserted "if the licensee considers service area limitations and subject to applicable federal law", in (a)(1)(C) substituted "patient" for "licensee," deleted "or there is no hospital in the service area of the ambulance" following "facility," and inserted "and subject to applicable federal law," and substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a)(2); substituted "department" for "division" in (b) and (c)(2); and made a minor stylistic change.

Subchapter 11 — Criminal Records Check

SECTION.
20-13-1101. Definitions.
20-13-1102. Mandatory criminal history checks for emergency medical services personnel.
20-13-1103. [Repealed.]
20-13-1104. Form — State and national criminal history check.
20-13-1105. Response — File copies.
20-13-1106. Disqualifying offenses — Waiver.
20-13-1108. Additional checks.
20-13-1109. Report and index — Forms — Database.
20-13-1111. Notice of convictions.
20-13-1112. Forms — Regulations.

20-13-1101. Definitions.

As used in this subchapter:

(1) "Applicant" means any individual seeking Arkansas emergency medical services personnel licensure or relicensure;

(2) "Bureau" means the Identification Bureau of the Department of Arkansas State Police;

(3) "Care" means treatment, services, assistance, education, training, instruction, or supervision in the prehospital emergency medical systems environment;

(4) "Division of EMS and Trauma Systems" means the organization within the Department of Health responsible for the enforcement of emergency medical services legislation within the State of Arkansas;

(5) "Emergency medical services system" means the transportation and medical care provided to the ill or injured prior to arrival at a medical facility by a licensed emergency medical services personnel or other health care provider and the continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility;

(6) "Emergency medical services personnel" means the individual who has been licensed as an EMT, Advanced EMT, or Paramedic and who may perform those services equivalent to level of licensure;

(7) "Index" means the database maintained by the bureau of criminal records checks that have been conducted on applicants for emergency medical services personnel licensure and relicensure;

(8) "Licensure" means the official acknowledgment by the Department of Health that an individual has demonstrated competence to perform the emergency medical services required for licensure under the rules, regulations, and standards adopted by the board upon recommendation by the Emergency Medical Services Advisory Council;

(9) "Licensing agency" means the government agency charged with licensing the qualified individual to provide prehospital care;

(10) "National criminal history check" means a review of national criminal records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(11) "Relicensure" means the official acknowledgment by the division that an individual has demonstrated competence to perform the emergency medical services required for relicensure under Arkansas EMS Rules and Regulations;

(12) "Report" means a statement of the criminal history of an applicant issued by the bureau; and

(13) "State criminal history check" means a review of state criminal records conducted by the bureau using the Arkansas Crime Information Center.

History. Acts 1999, No. 666, § 1; 2009, No. 689, § 13.

A.C.R.C. Notes. In Acts 2009, No. 689, § 13, an apparent clerical error resulted in the following language to be omitted from § 20-13-1101(7): "criminal records checks that have been conducted on applicants for". Section 20-13-1101(7) is set out above to include the omitted language.

Amendments. The 2009 amendment substituted "emergency medical services personnel licensure or relicensure" for "emergency medical technician certification or recertification" in (1); deleted (4), (5), and (6), which defined "certification," "certifying agency," and "division," respectively, inserted (8) and (9), and redesignated the remaining subdivisions accordingly; substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (4); substituted "licensed emergency medical

services personnel" for "certified emergency medical technician" in (5); rewrote (6), which read: "'Emergency medical technician (EMT)' means the individual who has been certified as an EMT, EMT-ambulance, EMT-intermediate or EMT-paramedic and who may perform those services equivalent to level of certification"; substituted "emergency medical services personnel licensure or relicensure" for "certification and recertification" in (7); and in (11), substituted "'Relicensure'" for "'Recertification'" or variant twice and made a minor stylistic change.

20-13-1102. Mandatory criminal history checks for emergency medical services personnel.

(a)(1) Any applicant applying for initial licensure shall complete a criminal history check form and shall request the Identification Bureau of the Department of Arkansas State Police to conduct a state or national criminal history check, or both, on the applicant.

(2) The applicant shall pay all appropriate fees for the state or national criminal history check, or both, as set forth by the bureau.

(3) The applicant shall attach the criminal history check form to the Arkansas emergency medical services personnel licensure application.

(b) The Division of EMS and Trauma Systems of the Department of Health shall conduct a state or national criminal history check, or both, on the applicant and determine whether the applicant is disqualified from certification based on the report of the applicant's criminal history and forward its determination to the applicant directly.

History. Acts 1999, No. 666, § 2; 2009, No. 689, § 14; 2011, No. 627, § 1.

Amendments. The 2009 amendment, in (a), substituted "licensure" for "certification" in (a)(1), substituted "emergency medical services personnel licensure" for "EMT certification" in (a)(3), and substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a)(4).

The 2011 amendment deleted former (a)(4) and (b) and redesignated former (c) as (b); and rewrote present (b).

20-13-1103. [Repealed.]

Publisher's Notes. This section, concerning application — fee — determination of disqualification, was repealed by Acts 2011, No. 627, § 1. The section was derived from Acts 1999, No. 666, § 2; 2009, No. 689, § 15.

20-13-1104. Form — State and national criminal history check.

(a) A request for a state or national criminal history check, or both, on a person shall include a completed form as required by the Identification Bureau of the Department of Arkansas State Police.

(b) If an applicant is requesting initial Arkansas emergency medical services personnel licensure and can provide proof of continuous residency in the State of Arkansas for the past five (5) years, then the applicant shall be required to have only a state criminal history check completed.

(c) If an applicant is requesting initial Arkansas emergency medical services personnel licensure and is from another state or if the applicant cannot provide proof of continuous residency in the State of

Arkansas for the past five (5) years, the applicant shall be required to have both a state and a national criminal history check completed.

History. Acts 1999, No. 666, §§ 2, 5; 2009, No. 689, § 16; 2011, No. 627, § 1.

A.C.R.C. Notes. In Acts 2009, No. 689, § 16, the following language of subsections (b) and (c) of § 20-13-1104 was omitted without being stricken through to indicate repeal: "the division and accepted by the bureau when requested by the division but shall be required to pay all appropriate fees one (1) time only and not at each recertification. (c)(1) If the applicant can provide proof of continuous residency in".

Amendments. The 2009 amendment, substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a); substituted "licensure or relicensure" for "certification or recertification" in the introductory language of (b) and in (d)(1); in (b), substituted "licensed" for "certified" and "emergency medical services personnel" for "emergency medical technician" in the introductory language, and substituted "emergency medical services personnel licensure" for "emergency medical technician certification" in (b)(2); in (d), substituted "emergency medical services personnel" for "EMT" in (d)(1) and (d)(2), and for "emergency medical technician" near the beginning of (d)(2); and made a minor stylistic change in (d)(2).

The 2011 amendment, in (a), deleted "records" following "history" and "provided by the Division of EMS and Trauma Systems of the Department of Health and" following "form"; rewrote (b); and deleted former (d).

20-13-1105. Response — File copies.

The Division of EMS and Trauma Systems of the Department of Health shall maintain on file for a period of three (3) years, subject to inspection by the Arkansas Crime Information Center or the Identification Bureau of the Department of Arkansas State Police, a copy of each criminal history check completed by all applicants requesting state certification.

History. Acts 1999, No. 666, §§ 3, 6; 2011, No. 627, § 1.

Amendments. The 2011 amendment deleted (a); and rewrote the remainder of the section.

20-13-1106. Disqualifying offenses — Waiver.

(a) Except as provided in subdivision (e)(1) of this section, the Division of EMS and Trauma Systems of the Department of Health shall issue a determination that a person is disqualified from certification or recertification if the person has been found guilty of or has pleaded guilty or nolo contendere to any of the offenses listed in subsection (b) of this section, including offenses for which the record has been expunged. However, the Division of EMS and Trauma Systems shall forward a request for a waiver to the Director of the Department of Health on all applicants who have been convicted of the crimes listed in subsection (b) of this section if five (5) years have passed since the conviction, if five (5) years have passed since release from custodial confinement, or if the applicants are currently certified emergency medical technicians, prior to making the final determination on certification or recertification. These individuals will not be suspended prior to the director's making the final determination.

(b)(1) Capital murder as prohibited in § 5-10-101;

(2) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(3) Manslaughter as prohibited in § 5-10-104;

(4) Negligent homicide as prohibited in § 5-10-105;

(5) Kidnapping as prohibited in § 5-11-102;

(6) False imprisonment in the first degree as prohibited in § 5-11-103;

(7) Permanent detention or restraint as prohibited in § 5-11-106;

(8) Robbery as prohibited in § 5-12-102;

(9) Aggravated robbery as prohibited in § 5-12-103;

(10) Battery in the first degree as prohibited in § 5-13-201;

(11) Aggravated assault as prohibited in § 5-13-204;

(12) Introduction of controlled substance into the body of another person as prohibited in § 5-13-210;

(13) Terroristic threatening in the first degree as prohibited in § 5-13-301(a);

(14) Rape as prohibited in § 5-14-103;

(15) Sexual indecency with a child as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, and fourth degree as prohibited in §§ 5-14-124 — 5-14-127;

(17) Incest as prohibited in § 5-26-202;

(18) Offenses against the family as prohibited in §§ 5-26-303 — 5-26-306;

(19) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201;

(20) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203;

(21) Permitting child abuse as prohibited in § 5-27-221(a)(1) and (3);

(22) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

(23) Felony adult abuse as prohibited in § 5-28-103;

(24) Theft of property as prohibited in § 5-36-103;

(25) Theft by receiving as prohibited in § 5-36-106;

(26) Arson as prohibited in § 5-38-301;

(27) Burglary as prohibited in § 5-39-201;

(28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, as prohibited in:

(A) The former § 5-64-401; and

(B) Sections 5-64-419 — 5-64-442;

(29) Promotion of prostitution in the first degree as prohibited in § 5-70-104;

(30) Stalking as prohibited in § 5-71-229;

(31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to commit any of the offenses listed in this subsection;

(32) Fourth or subsequent driving while intoxicated violations that constitute felony offenses under § 5-65-111(b)(3) and (4);

(33) Computer child pornography as prohibited in § 5-27-603; and

(34) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

(c) An applicant shall not be disqualified from certification or recertification when the applicant has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor if the offense:

(1) Did not involve exploitation of an adult, abuse of a person, neglect of a person, or sexual contact; or

(2) Was not committed while performing the duties of an emergency medical technician.

(d)(1) The provisions of this section may be waived by the Department of Health upon written request by the person who is the subject of the criminal history check.

(2) The written request for waiver shall be mailed to the director within fifteen (15) calendar days after receipt of the determination by the Department of Health and Human Services.

(3) Factors to be considered before granting a waiver shall include, but not be limited to:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the adjudication of guilt;

(D) The person's subsequent work history;

(E) The person's employment references;

(F) The person's character references; and

(G) Any other evidence demonstrating that the person does not pose a threat to the health or safety of persons to be cared for.

(e)(1) For purposes of this section, an expunged record of a conviction or plea of guilty or nolo contendere to an offense listed in subsection (b) of this section shall not be considered a conviction, guilty plea, or nolo contendere plea to the offense unless the offense is also listed in subdivision (e)(2) of this section.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following shall result in permanent disqualification:

(A) Capital murder as prohibited in § 5-10-101;

(B) Murder in the first degree as prohibited in § 5-10-102 and murder in the second degree as prohibited in § 5-10-103;

(C) Kidnapping as prohibited in § 5-11-102;

(D) Rape as prohibited in § 5-14-103;

(E) Sexual assault in the first degree as prohibited in § 5-14-124 and sexual assault in the second degree as prohibited in § 5-14-125;

(F) Endangering the welfare of a minor in the first degree as prohibited in § 5-27-203 and endangering the welfare of a minor in the second degree as prohibited in § 5-27-204;

(G) Incest as prohibited in § 5-26-202;

(H) Arson as prohibited in § 5-38-301;

(I) Endangering the welfare of an incompetent person in the first degree as prohibited in § 5-27-201; and

(J) Adult abuse that constitutes a felony as prohibited in § 5-28-103.

History. Acts 1999, No. 666, § 4; 2003, No. 1087, § 18; 2003, No. 1383, § 1; 2003, No. 1473, § 39; 2005, No. 1773, §§ 1, 2; 2005, No. 1923, § 5; 2011, No. 570, § 125.

A.C.R.C. Notes. Acts 2011, No. 570, § 1, provided: "Legislative intent. The intent of this act is to implement comprehensive measures designed to reduce recidivism, hold offenders accountable, and contain correction costs."

Amendments. The 2011 amendment subdivided part of (b)(28) and added (b)(28)(B); and, in (b)(28)(A), added "The former" at the beginning.

20-13-1108. Additional checks.

The Division of EMS and Trauma Systems of the Department of Health maintains the right to conduct additional state or national criminal background checks at the cost of the division on applicants or Arkansas-licensed emergency medical services personnel under investigation for violation of current emergency medical services laws or rules.

History. Acts 1999, No. 666, § 3; 2009, No. 689, § 17.

Amendments. The 2009 amendment substituted "the Department of Health" for "Division of Health of the Department of Health and Human Services," "licensed" for "certified," "services personnel" for "technician," and deleted "and regulations" at the end.

20-13-1109. Report and index — Forms — Database.

(a) The Identification Bureau of the Department of Arkansas State Police shall maintain an index of the results of each applicant's criminal history check.

(b) The Division of EMS and Trauma Systems of the Department of Health shall develop forms that are approved by the bureau to be used for criminal history checks conducted under this subchapter.

(c) The division shall develop and maintain a database of determinations regarding applicants.

History. Acts 1999, No. 666, § 6; 2011, No. 627, § 2.

Amendments. The 2011 amendment deleted former (a) and redesignated the remaining subsections; substituted "Identification Bureau of the Department of Arkansas State Police" for "bureau" in (a); and substituted "Division of EMS and Trauma Systems of the Department of Health" for "division" in (b).

20-13-1111. Notice of convictions.

Arkansas-licensed emergency medical services personnel shall notify the Division of EMS and Trauma Systems of the Department of Health of any conviction of or plea of guilty or nolo contendere to any offenses listed in § 20-13-1106(b) within ten (10) calendar days after the conviction or guilty plea or plea of nolo contendere.

History. Acts 1999, No. 666, § 4; 2009, No. 689, § 18.

Amendments. The 2009 amendment substituted "licensed emergency medical services personnel" for "certified emergency medical technicians," and substituted "the Department of Health" for "the Division of Health of the Department of Health and Human Services."

20-13-1112. Forms — Regulations.

The Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, and the Division of EMS and Trauma Systems of the Department of Health shall cooperate to prepare forms and promulgate consistent regulations as necessary to implement this subchapter.

History. Acts 1999, No. 666, § 7; 2011, No. 627, § 3.

Amendments. The 2011 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services."

Subchapter 13 — Public Access to Automated External Defibrillation Act

SECTION.
20-13-1306. Health spas.

20-13-1306. Health spas.

(a) As used in this section, "health spa" means any person, firm, corporation, organization, club, or association engaged in the sale of:

(1) Memberships in a program of physical exercise that includes the use of one (1) or more sauna, whirlpool, weightlifting room, massage, steam room, or exercising machine or device; or

(2) The right or privilege to use exercise equipment or facilities such as a sauna, whirlpool, weightlifting room, massage, steam room, or exercising machine or device, including, but not limited to:

(A) For-profit businesses, firms, corporations, organizations, clubs, or associations;

(B) Bona fide nonprofit organizations, including, but not limited to, the Young Men's Christian Association, Young Women's Christian Association, or similar organizations whose functions as health spas are only incidental to the overall functions and purposes;

(C) Any organization primarily operated for the purpose of teaching a particular form of martial arts such as judo or karate;

(D) Any college or university fitness center;

(E) Any country club; or

(F) Weight-loss or weight-control services which do not provide physical exercise facilities and which do not obligate the customer for more than twenty-five (25) months.

(b)(1) Each health spa shall have at least one (1) automated external defibrillator on the premises.

(2) The defibrillator shall at all times be placed in the location that best provides accessibility to staff, members, and guests.

(3) At all times during staffed business hours, the spa shall ensure that at least one (1) employee who has completed a knowledge and skills course in operating an automated external defibrillator and in cardiopulmonary resuscitation is assigned to be on duty.

(4) An unstaffed health spa shall have on the premises:

(A) A telephone for 911 telephone call access;

(B) An advisory warning that indicates that members of the unstaffed health spa should be aware that working out alone may pose risks to the health spa member's health and safety; and

(C) In plain view:

(i) A sign indicating the location of the automated external defibrillator; and

(ii) A sign providing instruction in the use of the automated external defibrillator and in cardiopulmonary resuscitation.

(c) No cause of action against a health spa or its employees may arise in connection with the use or nonuse of an automated external defibrillator unless the health spa has:

(1) Failed to purchase an automated external defibrillator as required under this section; or

(2) Acted with gross negligence in the use of an automated external defibrillator.

(d) If a health spa does not comply with this section, any contract for health spa services shall be voidable at the option of the buyer.

History. Acts 2005, No. 1199, § 1; 2007, No. 827, § 158; 2007, No. 1606, § 1.

A.C.R.C. Notes. Pursuant to Acts 2007, No. 827, § 240, the amendment of § 20-13-1306 by Acts 2007, No. 1606, § 1 supersedes the amendment of § 20-13-1306 by Acts 2007, No. 827, § 158.

Amendments. The 2007 amendment by No. 1606, in (b), substituted "during staffed business hours" for "that a spa is open for business" and "in operating an automated external defibrillator and in cardiopulmonary resuscitation" for "as required under § 17-95-604" in (3), and added (4).

Subchapter 14 — Emergency Contraception for Victims of Sexual Assault

SECTION.
20-13-1401. Findings — Purpose.
20-13-1402. Definitions.
20-13-1403. Emergency contraception information required.

20-13-1401. Findings — Purpose.

(a) The General Assembly finds that:

(1) One (1) of every six (6) women in the United States will be the victim of a sexual assault;

(2) Forty-four percent (44%) of the victims of a sexual assault are under eighteen (18) years of age, and eighty percent (80%) of the victims of a sexual assault are under thirty (30) years of age;

(3) It is estimated that sixty percent (60%) of all sexual assaults are not reported;

(4) A woman who is the survivor of a sexual assault may face the additional trauma of an unwanted pregnancy or the fear that pregnancy may result;

(5) Each year, between twenty-five thousand (25,000) and thirty-two thousand (32,000) women in the United States become pregnant as a result of sexual assaults, and approximately twenty-two thousand (22,000) of these pregnancies could be prevented if these women used emergency contraception;

(6) Standards of emergency care established by the American College of Emergency Medicine and the American Medical Association require that sexual assault survivors be counseled about their risk of pregnancy and offered emergency contraception;

(7) The National Protocol for Sexual Assault Medical Forensic Examinations issued by the United States Department of Justice Office on Violence Against Women recognizes pregnancy as an often overwhelming and genuine fear among sexual assault survivors and recommends that health care providers discuss treatment options with patients, including reproductive health services;

(8) The Food and Drug Administration has declared emergency contraception to be safe and effective in preventing unintended pregnancy and has approved over-the-counter access to the medication for women over eighteen (18) years of age;

(9) Emergency contraception is designed to prevent pregnancy if taken within one hundred twenty (120) hours after unprotected sexual intercourse, but it is most effective if taken within twenty-four (24) hours after unprotected sexual intercourse;

(10) There are inconsistent policies and practices among Arkansas hospitals for dispensing emergency contraception and providing education to sexual assault survivors; and

(11) Because emergency contraception is time-sensitive and a sexual assault survivor may have delayed seeking hospital treatment, it is critical that she be informed of this option at the time of her treatment.

(b) The purpose of this subchapter is to:

(1) Promote awareness of the availability of emergency contraception for sexual assault survivors as a compassionate response to their traumas; and

(2) Reduce the number of unintended pregnancies and induced abortions that result from sexual assault.

History. Acts 2007, No. 1576, § 1.

20-13-1402. Definitions.

As used in this subchapter:

(1)(A) "Emergency contraception" means a drug approved by the Food and Drug Administration that prevents pregnancy after sexual intercourse, including without limitation oral contraceptive pills.

(B) "Emergency contraception" does not include RU-486, mifepristone, or any other drug or device that induces a medical abortion; and

(2) "Sexual assault survivor" means a female who:

(A) Alleges or is alleged to have been the victim of sexual assault or to have been raped; and

(B) Presents as a patient for treatment with regard to the sexual assault or rape.

History. Acts 2007, No. 1576, § 1.

20-13-1403. Emergency contraception information required.

(a) All health care facilities that are licensed in this state and provide emergency care to sexual assault survivors shall amend their evidence-collection protocols for the treatment of sexual assault survivors to include informing the survivor in a timely manner of the availability of emergency contraception as a means of pregnancy prophylaxis and educating the sexual assault survivor on the proper use of emergency contraception and the appropriate follow-up care.

(b) This section does not require:

(1) A health care professional who is employed by a health care facility that provides emergency care to a sexual assault survivor to inform the sexual assault survivor of the availability of emergency contraception if the health care professional refuses to provide the information on the basis of religious or moral beliefs; or

(2) A health care facility to provide emergency contraception to a sexual assault survivor who is not at risk of becoming pregnant as a result of the sexual assault or who was already pregnant at the time of the sexual assault.

(c) The General Assembly encourages each health care facility to provide training to emergency room staff concerning the efficacy of emergency contraception and the time-sensitive nature of the drug.

(d)(1) Because emergency contraception is time-sensitive and a sexual assault survivor may seek information on or direct access to emergency contraception to prevent an unintended pregnancy resulting from the assault instead of or before seeking hospital treatment, it is critical that a sexual assault survivor has accurate information about the availability and use of emergency contraception.

(2) Therefore, the General Assembly encourages:

(A) An entity offering victim assistance or counseling and rape crisis hotlines to include information concerning the availability and use of emergency contraception; and

(B) A licensed or registered pharmacy in the State of Arkansas to distribute information concerning the availability and use of emergency contraception.

History. Acts 2007, No. 1576, § 1.

Subchapter 15 — Protection from Life-Threatening Disease

SECTION.

20-13-1501. Definitions.
20-13-1502. Possible exposure of emergency response workers to airborne or blood-borne diseases — Testing.

20-13-1501. Definitions.

As used in this subchapter:

(1) "Airborne or blood-borne disease" means a potentially life-threatening disease, including without limitation:

(A) Tuberculosis;

(B) Hepatitis C; and

(C) Hepatitis B;

(2) "Emergency response worker" means:

(A) Paramedics;

(B) Emergency response employees;

(C) Firefighters;

(D) First response workers;

(E) Emergency medical technicians;

(F) Emergency medical services personnel;

(G) Volunteers making an authorized emergency response; and

(H) A person rendering services as a "Good Samaritan" under the "Good Samaritan" law, § 17-95-101;

(3) "Health care facility" means a hospital, nursing home, blood bank, blood center, sperm bank, or other health care institution; and

(4) "Health care provider" means any physician, nurse, paramedic, or other person providing medical, nursing, or other health care services of any kind.

History. Acts 2009, No. 1185, § 1.

20-13-1502. Possible exposure of emergency response workers to airborne or blood-borne diseases — Testing.

(a)(1) Consent is not required for a health care provider or health care facility to test an individual for an airborne or blood-borne disease when a health care provider or an employee of a health care facility has a type of contact with an individual that may transmit an airborne or blood-borne disease, as determined by a physician in his or her medical judgment.

(2) The results of the tests authorized under subdivision (a)(1) of this section shall be provided by the physician ordering the tests to the affected health care provider's physician or the employee's physician and to the physician of the individual who was tested.

(b)(1) Notwithstanding any other law to the contrary, a person who performs a test under subsection (a) of this section shall not be subject to civil or criminal liability for doing so.

(2) Notwithstanding any other law to the contrary, a person who discloses a test result in accordance with the provisions of subsection (a) of this section shall not be subject to civil or criminal liability.

History. Acts 2009, No. 1185, § 1; 2011, No. 1121, § 2.

Amendments. The 2011 amendment substituted "health care facility" for "health facility" following the first occurrence of "provider or" in (a)(1).

CHAPTER 14

INDIVIDUALS WITH DISABILITIES

SUBCHAPTER.

2. Governor's Commission on People with Disabilities.
7. Head Injuries.

Subchapter 2 — Governor's Commission on People with Disabilities

SECTION.

20-14-203. Ex officio members.

20-14-203. Ex officio members.

(a) The Director of the Department of Human Services, the deputy director of the appropriate division as determined by the Director of the Department of Human Services, and the Director of the Department of Workforce Services or any director, commissioner, or administrator of successors' agencies shall serve as ex officio members of the Governor's Commission on People with Disabilities.

(b) The Governor shall also appoint two (2) members of the General Assembly to serve as ex officio members of the commission.

History. Acts 1985, No. 911, § 3; A.S.A. 1947, § 82-2910.

Publisher's Notes. This section is being set out to revise the reference to the "Director of the Department of Workforce Services" in (a).

Subchapter 7 — Head Injuries

SECTION.

20-14-705. [Repealed.]

20-14-705. [Repealed.]

Publisher's Notes. This section, concerning audit of fines, was repealed by Acts 2007, No. 827, § 159. The section was derived from Acts 1989, No. 491, § 1.

CHAPTER 15

DISEASE AND DISEASE PREVENTION GENERALLY

SUBCHAPTER.

3. Phenylketonuria, Hypothyroidism, and Sickle-Cell Anemia.
6. Renal Diseases.
10. Breast Cancer — Mammograms.
12. Immunization Registration.
16. Prostate Cancer Act of 1999.
17. Colorectal Cancer Act of 2005.
18. Arkansas HIV-AIDS Minority Task Force Act of 2007.
19. Colorectal Cancer Prevention, Early Detection, and Treatment Act of 2009.

Subchapter 3 — Phenylketonuria, Hypothyroidism, and Sickle-Cell Anemia

SECTION.

20-15-304. Administration by Department of Health.

A.C.R.C. Notes. Acts 2009, No. 1191, §§ 1-4, provided: "SECTION 1. This act shall be known and may be cited as the 'Arkansas Legislative Task Force on Sickle Cell Disease'."

"SECTION 2. Arkansas Legislative Task Force on Sickle Cell Disease — Creation.

"(a) The Arkansas Legislative Task Force on Sickle Cell Disease is created.

"(b) The task force shall consist of the following members:

"(1) One (1) member to represent Arkansas Children's Hospital;

"(2) One (1) member to represent the Sickle Cell Clinic of Arkansas Children's Hospital;

"(3) One (1) member to represent the Newborn Screening Program of the Department of Health;

"(4) One (1) member to represent the Office of Minority Health of the Department of Health;

"(5) One (1) member to represent the Arkansas Foundation for Medical Care;

"(6) One (1) member to represent the Arkansas Minority Health Commission;

"(7) One (1) member to represent Partners for Inclusive Communities of the University of Arkansas for Medical Sciences;

"(8) One (1) member who is a patient suffering from Sickle Cell Disease; and

"(9) One (1) member who is a parent of a patient suffering from Sickle Cell Disease.

"(c)(1) The Speaker of the House of Representatives shall call the first meeting within thirty (30) days of the effective date of this act.

"(2) At the first meeting, the members of the task force shall elect from the membership a chair and other officers as needed for the transaction of its business.

"(3)(A) The task force shall conduct its meetings in Pulaski County at the State Capitol.

"(B) Meetings shall be held at least one (1) time every three (3) months but may occur more often at the call of the chair.

"(d) If a vacancy occurs on the task force, the vacancy shall be filled by the same process as the original appointment.

"(e) The task force shall establish rules and procedures for conducting its business.

"(f) A majority of the members of the task force shall constitute a quorum for transacting any business of the task force.

"(g) The Bureau of Legislative Research shall provide staff for the task force."

"SECTION 3. Arkansas Legislative Task Force on Sickle Cell Disease — Duties.

"(a) The Arkansas Legislative Task Force on Sickle Cell Disease shall:

"(1) Examine how the State of Arkansas responds to Sickle Cell Disease;

"(2) Determine the best practices to treat Sickle Cell Disease;

"(3) Recommend more efficient methods for treating Sickle Cell Disease;

"(4) Recommend how to obtain more federal funds for treating Sickle Cell Disease and providing special education to children with Sickle Cell Disease; and

"(5) Recommend to the General Assembly specific changes to the law that will improve treatment of Sickle Cell Disease and improve the provision of special education to children with Sickle Cell Disease.

"(b) On or before August 31, 2010, the task force shall provide the General Assembly with a written explanation of the recommended legislative changes."

"SECTION 4. The Arkansas Legislative Task Force on Sickle Cell Disease expires on October 1, 2010."

Acts 2011, No. 1149, § 4, provided: "Section 4 of Act 1191 of 2009 is amended to read as follows: "The Arkansas Legislative Task Force on Sickle Cell Disease expires on October 1, 2013."

20-15-304. Administration by Department of Health.

It shall be the duty of the Department of Health to:

(1) Enforce this subchapter;

(2) Prescribe the tests that may be administered in compliance with this subchapter;

(3) Promulgate regulations in conjunction with the Insurance Commissioner establishing:

(A) What persons and institutions shall be required to obtain specimens from newborn infants in compliance with this subchapter;

(B) The amount to be charged by the central laboratory for processing the specimens; and

(C) The method of billing the charges to the persons and institutions;

(4) Furnish copies of this subchapter and the rules promulgated pursuant to this subchapter to physicians, hospitals, or other institutions or persons required by its regulations to have tests administered to newborn infants;

(5) Establish a central laboratory and to equip, staff, and operate the laboratory for the purpose of receiving specimens from physicians, hospitals, and institutions, to assure that tests are conducted, and to report findings resulting from the tests;

(6) Monitor positive test results and assist in treatment and care of affected infants, such follow-up procedures to begin no later than ten (10) days from the time a specimen is diagnosed as positive; and

(7) Disseminate information and advice to the public concerning the dangers and effects of phenylketonuria, hypothyroidism, galactosemia,

sickle-cell anemia, and all other disorders of metabolism for which screening is performed by or for the State of Arkansas.

History. Acts 1967, No. 192, § 2; 1981, No. 481, § 2; A.S.A. 1947, § 82-626; Acts 1987, No. 573, § 2; 2003, No. 1293, § 2.

Subchapter 6 — Renal Diseases

SECTION.
20-15-603. State Kidney Disease Commission — Powers and duties.

20-15-603. State Kidney Disease Commission — Powers and duties.

(a) The State Kidney Disease Commission shall have the following functions, powers, and duties:

(1)(A) To establish a program to assist persons suffering from acute or chronic renal failure in obtaining care and treatment requiring dialysis.

(B) The program shall provide financial assistance for persons suffering from chronic renal diseases who require life-saving care and treatment for the renal disease to the extent as determined by the commission that a person is unable to pay for the services on a continuing basis without causing unjust and unusual hardship to himself or herself and his or her immediate family including without limitation a drastic lowering of the standard of living;

(2) To develop standards for determining eligibility for assistance in defraying the cost of care and treatment of renal disease under this program;

(3) To cooperate with hospitals, private groups, and organizations and public agencies in the development of positive programs to bring about financial assistance and support of evaluation and treatment of patients suffering from chronic kidney disease;

(4) To cooperate with the national and state kidney foundations and with medical programs of the state and federal government for the purpose of obtaining the maximum amount of federal and private assistance possible in support of a kidney disease treatment program;

(5) To establish criteria and standards for evaluating the financial ability of persons suffering from chronic renal disease to pay for their own care, including the availability of third-party insurance coverage, for the purpose of establishing standards for eligibility for financial assistance in defraying the cost of the care and treatment from funds appropriated to the commission for renal disease treatment purposes;

(6) To accept gifts, grants, and donations from private sources and the federal government and support from municipal and county governments to be used for the purposes of this subchapter in defraying costs incurred by persons suffering from acute or chronic renal disease who are unable to meet the total cost of life-saving care and treatment for renal disease; and

(7) To accept gifts, grants, and donations from private sources and the federal government and support from municipal and county governments to be used to honor persons who have provided living kidney donations to Arkansans in need of kidney transplantation.

(b) Whereas the current Department of Finance and Administration accounting system will accept current-year refunds, credit the current-year appropriation, and allow expenditure of the funds, the commission, administered by the Arkansas Rehabilitation Services, may accept prior-year refunds and contributions and deposit the funds in the agency cash fund in an account specifically identified as the State Kidney Disease Escrow Account and disbursed for the purchase of additional services for clients served by the commission.

History. Acts 1971, No. 450, § 4; A.S.A. 1947, § 82-2504; Acts 1987, No. 1050, § 9; 1989 (1st Ex. Sess.), No. 202, § 8; 2011, No. 268, § 1.

Amendments. The 2011 amendment subdivided (a)(1) into (a)(1)(A) and (B); in (a)(6), deleted "municipal and county governments" following "private sources" and inserted "and support from municipal and county governments"; and added (a)(7).

Subchapter 9 — Human Immunodeficiency Virus or Acquired Immunodeficiency Syndrome

20-15-905. HIV Shield Law.

CASE NOTES

Criminal Trial.

Health Insurance Portability and Accountability Act of 1996 does not limit a state's authority to investigate crimes; therefore, there was no error committed by the prosecution's decision to subpoena a nurse practitioner to testify that defendant had tested positive for the Human Immuno-Deficiency Virus. White v. State, 370 Ark. 284, 259 S.W.3d 410 (2007).

Subchapter 10 — Breast Cancer — Mammograms

SECTION.

20-15-1002. Definitions.
20-15-1003. Advisory committee.

20-15-1002. Definitions.

As used in this subchapter:

(1) "Accreditation body" means a body that has been approved by the Secretary of the United States Department of Health and Human Services to accredit mammography facilities under Pub. L. No. 102-539 (21 C.F.R. 900), the federal Mammography Quality Standards Act of 1992;

(2) "Diagnostic mammography" is a problem-solving radiologic procedure of higher intensity than screening mammography provided to a woman who is suspected of having breast pathology. A patient is usually referred for analysis of palpable abnormalities or for further evaluation of mammographically detected abnormalities. All images are immedi-

ately reviewed by the physician interpreting the study, and additional views are obtained as needed. A physical examination of the breast by the interpreting physician to correlate the radiologic findings is often performed as part of the study;

(3) "Division" means the Division of Health of the Department of Health and Human Services;

(4) "Mammography" means radiography of the breast; and

(5) "Screening mammography" is a radiologic procedure provided to a woman who has no signs or symptoms of breast cancer for the purpose of early detection of breast cancer. The procedure entails two (2) views of each breast and includes a physician's interpretation of the results of the procedure.

History. Acts 1989, No. 292, § 2; 1995, No. 508, § 1.

Publisher's Notes. This section is being set out to reflect the redesignations of (2) and (3) to maintain alphabetical order following the change of the definiton of "Department" to "Division".

20-15-1003. Advisory committee.

(a) To assure the safety and accuracy of screening and diagnostic mammography and to promote the highest quality imaging in the most efficient setting to contain costs, radiological standards and quality assurance programs shall be established and administered by the Director of the Department of Health.

(b) To assist the Director of the Department of Health in establishing the quality standards, there is created an advisory committee to be composed of:

(1) The Director of Mammography of University Hospital Department of Radiology at the University of Arkansas for Medical Sciences, or his or her designee;

(2) The Chair of the Breast Screening Project of the Arkansas Division of the American Cancer Society, or his or her designee;

(3) A physician appointed by the Council of the Arkansas Medical Society, or his or her designee;

(4) A health physicist from the Division of Radiation Control of the Department of Health, or his or her designee;

(5) A medical physicist with experience and training in mammography procedures appointed by the Director of the Department of Health;

(6) A registered X-ray technologist with experience and training in mammography practices and procedures appointed by the Director of the Department of Health; and

(7) The President of the Arkansas Chapter of the American College of Radiology, or his or her designee.

(c) The committee and the Director of the Department of Health shall continuously review and revise the quality standards in light of current scientific knowledge, but no less frequently than one (1) time every year.

History. Acts 1989, No. 292, § 5; 1995, No. 508, § 3.

Publisher's Notes. This section is being set out to reflect a correction in (b)(5).

Subchapter 12 — Immunization Registration

SECTION.
20-15-1202. Statewide immunization registry.
SECTION.
20-15-1203. Duty of providers — Penalty.

20-15-1202. Statewide immunization registry.

(a)(1) The Department of Health shall establish a statewide immunization registry.

(2) Immunization records shall include data as specified by the department.

(b) The department may make information regarding the immunization status of children in the registry available to the parents or guardians of a child, to providers who report on the immunization status of children in their care, and to such other persons or organizations designated by rule of the State Board of Health.

(c) The board shall adopt rules to implement this subchapter, including provisions for confidentiality of medical information.

History. Acts 1995, No. 432, § 2; 1997, No. 869, § 1; 2011, No. 179, § 1.

Amendments. The 2011 amendment deleted "childhood" preceding "immunization" in the head; redesignated former (a) as present (a)(1) and (a)(2); substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a)(1); substituted "department" for "division" in (a)(2) and (b); deleted "or regulation" following "rule" in (b); and substituted "adopt rules to" for "promulgate regulations needed to" in (c).

20-15-1203. Duty of providers — Penalty.

(a)(1) A provider shall register with the Department of Health the intent to administer childhood immunizations to an individual under twenty-two (22) years of age under guidelines established by the department.

(2) A provider shall report to the department the administration of a childhood immunization to an individual under twenty-two (22) years of age.

(3)(A) A provider may report the administration of adult immunizations to the department.

(B) A provider may report an adult immunization under subdivision (a)(3)(A) of this section only after receiving consent from the adult.

(b) A provider who administers a childhood immunization and fails to register with the department or make the required reports to the department, or both, shall be fined twenty-five dollars ($25.00).

History. Acts 1995, No. 432, § 3; 2011, No. 179, § 2.

Amendments. The 2011 amendment substituted "department" for "division" throughout the section; substituted "A provider" for "All providers" at the begin-

ning of (a)(1) and (a)(2); in (a)(1), substituted "Department of Health the" for "Division of Health of the Department of Health and Human Services their" and "an individual" for "persons"; inserted (a)(3)(A) and (a)(3)(B); and substituted "a childhood immunization" for "an immunization" in (b).

Subchapter 16 — Prostate Cancer Act of 1999

SECTION.
20-15-1601 — 20-15-1604. [Repealed.]

20-15-1601 — 20-15-1604. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 1484, § 6. The subchapter was derived from the following sources:

20-15-1601. Acts 1999, No. 397, § 1.

20-15-1602. Acts 1999, No. 397, § 2; 2001, No. 1455, § 1.

20-15-1603. Acts 1999, No. 397, § 3; 2001, No. 1455, § 2; 2003, No. 865, § 2.

20-15-1604. Acts 1999, No. 397, § 4; 2001, No. 1455, § 3; 2003, No. 865, § 3.

Subchapter 17 — Colorectal Cancer Act of 2005

SECTION.
20-15-1701. Title. [Repealed — Contingent effective date.]
20-15-1702. Findings and purpose. [Repealed — Contingent effective date.]
20-15-1703. Colorectal Cancer Control and Research Program — Demonstration project. [Repealed — Contingent effective date.]

20-15-1701. Title. [Repealed — Contingent effective date.]

This subchapter shall be known and may be cited as the "Colorectal Cancer Act of 2005".

History. Acts 2005, No. 2236, § 1.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1702. Findings and purpose. [Repealed — Contingent effective date.]

(a) The General Assembly finds that:

(1) Colorectal cancer is a significant threat to the health of Arkansas residents;

(2) Colorectal cancer is more likely to occur as persons get older. More than ninety percent (90%) of people with this disease are diagnosed after fifty (50) years of age;

(3) In Arkansas, it is estimated that one thousand six hundred thirty (1,630) new cases of cancer of the colon and rectum will occur in 2005;

(4) Colorectal cancer exacts an enormous economic toll on our society in direct medical costs and indirect costs such as lost work due to illness and shortened lives among experienced workers;

(5) Colorectal cancer is largely preventable; and

(6) Screening for colorectal cancer can identify the precursors of cancer before the disease begins and the precursors can be removed, thus preventing the emergence of any colorectal cancer.

(b) This subchapter is intended to reduce the physical and economic burden of colorectal cancer in Arkansas by supporting research and cancer control activities.

History. Acts 2005, No. 2236, § 1.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1703. Colorectal Cancer Control and Research Program — Demonstration project. [Repealed — Contingent effective date.]

(a) There is established within the Arkansas Cancer Research Center at the University of Arkansas for Medical Sciences in collaboration with the Department of Health a Colorectal Cancer Control and Research Program.

(b)(1) The first phase of this program shall be the Colorectal Cancer Control Demonstration Project.

(2) The goal of the demonstration project is to:

(A) Assess the resources in this state that will enable Arkansas residents to obtain colorectal screening examinations and laboratory tests, to include a fecal occult blood test, double contrast barium enema, flexible sigmoidoscopy, and colonoscopy; and

(B) Plan and implement an educational and screening intervention program.

(c) The demonstration project shall be established at the Arkansas Cancer Research Center at the University of Arkansas for Medical Sciences and shall consist of the following:

(1) An assessment shall be made to:

(A) Identify the number of facilities in the state that provide double contrast barium enema, flexible sigmoidoscopy, and colonoscopy;

(B) Identify physicians, including family practioners, gastroenterologists, and surgical endoscopists who perform colonoscopy in the state and the regions of the state in which they practice;

(C) Evaluate differences in cost across facilities as compared to Medicare payment for procedures; and

(D) Identify and evaluate available resources for follow-up diagnostics and treatment as needed;

(2)(A) Education and screening intervention to demonstrate the effectiveness of providing education and access to screening in order to increase the number of Arkansas residents who obtain screening.

(B)(i) The education and screening intervention segment of the demonstration project will enroll Arkansas residents over fifty (50) years of age from multiple sites who are identified as having the highest colorectal cancer incidence and mortality in each of the five

(5) regions of the state through the department's Hometown Health Improvement Initiative.

(ii) The number of individuals to be enrolled shall be determined by the extent of funding available.

(iii) The project segment will study three (3) approaches to education and screening as follows:

(a) Provision of an educational intervention designed to teach the individual about the need to seek screening;

(b) Provision of access to screening with no educational intervention; and

(c) Provision of educational intervention and access together.

(iv)*(a)* Access to screening may include payment vouchers for those patients determined to be underinsured or uninsured.

(b) The vouchers shall be redeemable by project participants for screening services obtained through participating physicians in each of the five (5) regions; and

(3)(A) Evaluation at the end of the demonstration period by project leaders to identify the program's effectiveness in increasing the number of individuals who obtained screening for colorectal cancer.

(B) The program evaluation information, coupled with the results of the assessment of screening resources in this state, will help to establish strategies for meeting the long-term goal under subsection (d) of this section.

(d)(1) The program will build on the results of the demonstration project to meet the long-term goal of the program.

(2) The long-term goal of the program is to reduce the physical and economic burden of colorectal cancer in this state by:

(A) Supporting research efforts into the cause, cure, treatment, early detection, and prevention of colorectal cancer and the survivorship of individuals diagnosed with colorectal cancer;

(B) Supporting research and educational activities that will inform the public of the value of colorectal cancer screening and will result in improved methods to promote screening and early detection;

(C) Supporting policy research to review and analyze long-term successes and future opportunities for reducing the burden of colorectal cancer through legislation;

(D) Providing for the full continuum of care, prevention, early detection, diagnosis, treatment, and cure of colorectal cancer; and

(E) Requiring providers to offer a wide range of colorectal cancer screening options.

(e)(1) The program shall provide for the full continuum of care, prevention, early detection, diagnosis, treatment, cure of colorectal cancer, and survivorship.

(2) The program shall be administered to:

(A) Provide colorectal cancer education and awareness to promote prevention and early detection;

(B) Provide colorectal cancer surveillance activities across the state;

(C) Provide screening for colorectal cancer with special focus on persons fifty (50) years of age and older and persons at high risk for colorectal cancer;

(D) Provide after-screening, medical referrals, and financial assistance for services necessary to follow up abnormal screening exams;

(E) Provide necessary advocacy and financial assistance to ensure that the persons obtain necessary treatment if a positive diagnosis is made; and

(F) Obtain information from health care insurers and providers concerning the extent of colorectal cancer screening, treatment, and insurance coverage.

History. Acts 2005, No. 2236, § 1.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

Subchapter 18 — Arkansas HIV-AIDS Minority Task Force Act of 2007

SECTION.
20-15-1801. Title.
20-15-1802. Findings.
20-15-1803. Arkansas HIV-AIDS Minority Task Force — Creation.
20-15-1804. Arkansas HIV-AIDS Minority Task Force — Powers and duties.
20-15-1805. Task force work additional to department programs.

A.C.R.C. Notes. Acts 2007, No. 842, § 3, provided:"The Task Force shall cease to exist on December 31, 2015."

20-15-1801. Title.

This subchapter shall be known and may be cited as the "Arkansas HIV-AIDS Minority Task Force Act of 2007".

History. Acts 2007, No. 842, § 1.

20-15-1802. Findings.

The General Assembly finds that:

(1) The incidence of HIV-AIDS is on the rise in Arkansas among women, African-Americans, and Hispanics;

(2) State and federal funds for HIV-AIDS prevention, intervention, and service programs for minorities in the State of Arkansas have decreased;

(3) More coalition building between community-based organizations in the execution of HIV-AIDS intervention and prevention programs is needed to reduce HIV-AIDS in minority communities and to make more effective use of limited resources; and

(4) An HIV-AIDS Minority Task Force is needed to increase public awareness of the gravity of HIV-AIDS in minority communities in Arkansas.

History. Acts 2007, No. 842, § 1.

20-15-1803. Arkansas HIV-AIDS Minority Task Force — Creation.

(a) The Arkansas HIV-AIDS Minority Task Force is created.

(b)(1) With consideration given to minority and stakeholder participation and for diversity of race, gender, geographic location, and sexual identity, the Governor shall appoint the following members to the task force:

(A)(i) Four (4) members who are affected by or are living with AIDS or HIV or a family member of someone who is living with HIV or AIDS.

(ii) Each member under subdivision (b)(1)(A)(i) of this section shall be from a different congressional district;

(B)(i) Three (3) members who are affiliated with minority community-based advocacy or service provider organizations as follows:

(a) One (1) member who is a woman; and

(b) Two (2) members who are Hispanic, African American, or members of a minority population other than Hispanic or African American.

(ii) At least one (1) member under this subdivision (b)(1)(B) shall be from a different congressional district;

(C) Two (2) members who represent faith-based organizations with an interest in HIV education, awareness, prevention, care, and treatment;

(D) One (1) member from the Arkansas Minority Health Commission;

(E) One (1) member to represent the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences;

(F) One (1) member to represent the HIV/STD/Hepatitis C Section of the Department of Health; and

(G) One (1) member to represent the medical insurance industry.

(2) The Chair of the Senate Interim Committee on Public Health, Welfare, and Labor and the Chair of the House Interim Committee on Public Health, Welfare, and Labor shall serve as ex officio members of the task force.

(c) The members of the task force shall draw lots for their terms of appointment so that six (6) members serve two-year terms, six (6) members serve three-year terms, and seven (7) members serve four-year terms.

(d)(1) The nonlegislative members of the task force shall serve without compensation.

(2) However, if funds are available, the nonlegislative members shall be reimbursed by the Arkansas Minority Health Commission for actual and necessary expenses incurred in the performance of their duties for the task force.

(e) If a vacancy occurs, the Governor shall appoint a person who represents the same constituency as the member being replaced.

(f)(1) The task force shall elect one (1) of its members to act as chair for a term of one (1) year.

(2) The task force shall elect one (1) of its members to act as cochair to serve in the absence of the chair for one (1) year.

(g) A majority of the members shall constitute a quorum for the transaction of business.

(h) The task force shall meet at least quarterly but may meet as necessary to further the intent of this subchapter.

(i) The Arkansas Minority Health Commission shall provide office space and staff for the task force as resources allow.

History. Acts 2007, No. 842, § 1; 2009, No. 1484, § 7; 2011, No. 1230, § 1.

Amendments. The 2009 amendment deleted (b)(1)(B)(i)(b) through (d), added their provisions as present (b)(1)(B)(i)(b), and made a related change.

The 2011 amendment deleted former (b)(1)(A)(i)(*a*) through (b)(1)(A)(i)(*d*); substituted "Each member under subdivision (b)(1)(A)(i) of this section" for "At least one (1) member under this subdivision (b)(1)(A)" in (b)(1)(A)(ii); deleted former (b)(1)(C), (b)(1)(F), (b)(1)(I), (b)(1)(J), (b)(1)(L), and (b)(1)(M), and redesignated the remaining subdivisions accordingly; substituted "with an interest in HIV education, awareness, prevention, care, and treatment" for "who are involved with groups or individuals who are living with HIV or AIDS" in present (b)(1)(C); and substituted "HIV/STD/Hepatitis C" for "HIV/STD" in present (b)(1)(F).

20-15-1804. Arkansas HIV-AIDS Minority Task Force — Powers and duties.

(a) The Arkansas HIV-AIDS Minority Task Force shall:

(1)(A) Conduct a series of public forums around the state to take public comment and to discuss the incidence of HIV-AIDS and the effectiveness of prevention and outreach programs within the minority population.

(B) One (1) of the public forums required under this subdivision (a)(1) shall be held in each of the state's congressional districts;

(2) Study ways to strengthen HIV and AIDS prevention programs and early intervention and treatment efforts in the state's African-American, Hispanic, and other minority communities;

(3) Study ways to address the needs of the state's minorities who have AIDS and their families; and

(4) Prepare and submit a report of task force findings and recommendations to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Department of Health on or before November 1, 2008.

(b) The report required under subdivision (a)(4) of this section shall include:

(1) Specific strategies for reducing the risk of HIV and AIDS in the state's minority communities;

(2) A plan for exchanging information and ideas among minority community-based organizations that provide HIV and AIDS prevention services;

(3) The needs of prevention and treatment programs within minority communities and the resources that are available within minority communities;

(4) Specific strategies for ensuring that minority group members who are at risk of HIV infection and AIDS seek testing;

(5) Specific strategies for ensuring that minority group members with HIV or AIDS are provided with access to treatment and secondary prevention services;

(6) Specific strategies to help reduce or eliminate high-risk behaviors in minority group members who test negative for HIV or AIDS but continue to practice high-risk behaviors; and

(7) A plan to outline the implementation of the recommendations of the task force.

(c) The task force shall also consider development of the following:

(1) Risk reduction and education programs for groups determined by the task force to be at risk of HIV infection;

(2) In consultation with a wide range of community leaders, education programs for the public;

(3) Pilot programs for the long-term care of individuals with AIDS or an AIDS-related condition, including care in nursing homes and in alternative settings;

(4) Programs to expand regional outpatient treatment of individuals with AIDS or an AIDS-related condition;

(5) A program to assist communities, including communities of less than five thousand (5,000) population, in establishing AIDS task forces and support groups for individuals with AIDS, an AIDS-related condition, and HIV infection; and

(6)(A) A statewide HIV and AIDS prevention campaign directed toward minority group members who are at risk of HIV infection.

(B) The Arkansas Minority Health Commission shall assist in the development and administration of the campaign.

(C) The campaign to be considered under subdivision (c)(6)(A) of this section may do any of the following as resources dictate:

(i) Use a variety of means of communication, including television, radio, outdoor activities, public service announcements, and peer-to-peer outreach;

(ii) Provide information on the risk of HIV and AIDS infection and strategies to follow for prevention, early detection, and treatment;

(iii) Use culturally sensitive literature and educational materials; and

(iv) Promote the development of individual skills for behavior modification.

History. Acts 2007, No. 842, § 1.

20-15-1805. Task force work additional to department programs.

The work of the Arkansas HIV-AIDS Minority Task Force that is developed under this subchapter is in addition to any programs developed and administered by the Department of Health.

History. Acts 2007, No. 842, § 2.

Subchapter 19 — Colorectal Cancer Prevention, Early Detection, and Treatment Act of 2009

SECTION.
20-15-1901. Title. [Contingent effective date.]
20-15-1902. Findings. [Contingent effective date.]
20-15-1903. Definition. [Contingent effective date.]
20-15-1904. Program for prevention of colorectal cancer. [Contingent effective date.]
20-15-1905. Program requirements. [Contingent effective date.]
SECTION.
20-15-1906. Colorectal Cancer Prevention, Early Detection, and Treatment Advisory Committee. [Contingent effective date.]
20-15-1907. Colorectal Cancer Research Program. [Contingent effective date.]
20-15-1908. Oversight Committee on Colorectal Cancer Research. [Contingent effective date.]

20-15-1901. Title. [Contingent effective date.]

This subchapter shall be known and may be cited as the "Colorectal Cancer Prevention, Early Detection, and Treatment Act of 2009".

History. Acts 2009, No. 1374, § 1.
A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1902. Findings. [Contingent effective date.]

(a) The General Assembly finds that:

(1)(A) Colorectal cancer is the second leading cause of cancer death in Arkansas.

(B) An estimated one thousand six hundred thirty (1,630) new cases of colorectal cancer will be diagnosed in Arkansas during 2009;

(2) Screening for colorectal cancer may identify the precursors of cancer before the disease begins and the precursors may be removed, thus preventing the emergence of most colorectal cancer; and

(3) The Colorectal Cancer Control Demonstration Project created in the Colorectal Cancer Act of 2005, § 20-15-1701 et seq., has produced findings indicating that:

(A)(i) Statewide only one-half (½) of adults over fifty (50) years of age have received colorectal cancer screening within the recom-

mended time interval and thirty-five percent (35%) have never been screened.

(ii) Screening rates are twenty-five percent (25%) lower in underserved areas of the state where health care services, health insurance coverage, educational attainment, and household income are limited;

(B)(i) Forty percent (40%) of Arkansans who should be screened for colorectal cancer have never received physician advice to be screened.

(ii) An individual in an underserved area of the state is less likely to receive appropriate advice about effective screening methods than is an individual in a better-served area of the state;

(C)(i) Fewer than forty percent (40%) of Arkansas citizens know that periodic screening for colorectal cancer should start at fifty (50) years of age.

(ii) Fifty-six percent (56%) of Arkansas citizens rate themselves as being at low risk for colorectal cancer.

(iii) Forty-two percent (42%) of Arkansas citizens identify cost as a significant barrier to screening; and

(D)(i) Eighty-one percent (81%) of low-income patients enrolled in the demonstration project successfully completed colorectal screening.

(ii) A statewide screening program for underserved individuals could reduce cancer incidence among screened individuals by thirty-two percent (32%), reduce five-year mortality risk by twenty-five percent (25%), and reduce cancer treatment costs by fifty-four percent (54%).

(b) This subchapter is intended to reduce the physical and economic burden of colorectal cancer in Arkansas by supporting research and cancer control activities across Arkansas.

History. Acts 2009, No. 1374, § 1; 2011, No. 1121, § 3.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

Amendments. The 2011 amendment substituted "An estimated" for "Colorectal cancer is estimated that" in (a)(1)(B).

20-15-1903. Definition. [Contingent effective date.]

As used in this subchapter, "high risk" means:

(1) An individual over fifty (50) years of age or who faces a high risk for colorectal cancer because of:

(A) The presence of polyps on a previous colonoscopy, barium enema, or flexible sigmoidoscopy;

(B) Family history of colorectal cancer;

(C) Genetic alterations of hereditary nonpolyposis colon cancer or familial adenomatous polyposis;

(D) Personal history of colorectal cancer, ulcerative colitis, or Crohn's disease; or

(E) The presence of any appropriate recognized gene markers for colorectal cancer or other predisposing factors; and

(2) Any additional or expanded definition of "persons at high risk for colorectal cancer" as recognized by medical science and determined by the Director of the Department of Health in consultation with the University of Arkansas for Medical Sciences.

History. Acts 2009, No. 1374, § 1.
A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1904. Program for prevention of colorectal cancer. [Contingent effective date.]

(a) There is created in the Department of Health the Arkansas Colorectal Cancer Prevention, Early Detection, and Treatment Program if funds are available.

(b) The Winthrop P. Rockefeller Cancer Institute at the University of Arkansas for Medical Sciences may collaborate with the department in conducting the program.

(c)(1) The program shall be designed in conformity with federal law and regulations regarding a program for prevention, early detection, and treatment of colorectal cancer.

(2) Funds shall not be used to supplant funds already available for prevention, early detection, and treatment of colorectal cancer.

(d) A contract may be made under this subchapter only if:

(1) In providing screenings for colorectal cancer, priority is given to low-income individuals who lack adequate coverage under health insurance and health plans for screenings for colorectal cancer;

(2) Screenings are carried out as preventive health measures in accordance with evidence-based screening guidelines and procedures;

(3) A payment made through the program for a screening procedure will not exceed the amount specified under federal law and regulations regarding a grant program for prevention, early detection, and treatment of colorectal cancer;

(4) Funds will not be spent to make payment for any item or service if that payment has been made or can reasonably be expected to be made:

(A) Under a state compensation program, an insurance policy, or a federal or state health benefits program; or

(B) By an entity that provides health services on a prepaid basis; and

(5) Fiscal controls and fund accounting procedures are established to ensure proper disbursal of and accounting for amounts received under this subchapter.

(e) Upon request, the department shall provide records maintained under this subchapter to the appropriate federal oversight agency.

(f) The program shall be implemented statewide.

History. Acts 2009, No. 1374, § 1.
A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1905. Program requirements. [Contingent effective date.]

A program funded under this subchapter shall:

(1) Provide screenings and diagnostic tests for colorectal cancer to individuals who are:

(A) Fifty (50) years of age or older;

(B) Both:

(i) Under fifty (50) years of age; and

(ii) At high risk for colorectal cancer; or

(C) Low-income;

(2) Provide appropriate case management and referrals for medical treatment of individuals screened under the program created in this subchapter;

(3) Directly or through coordination or an arrangement with health care providers or programs ensure the full continuum of follow-up and cancer care for individuals screened in the program, including without limitation:

(A) Appropriate follow-up for abnormal tests;

(B) Diagnostic services;

(C) Therapeutic services; and

(D) Treatment of detected cancers and management of unanticipated medical complications;

(4) Carry out activities to improve the education, training, and skills of health professionals, including allied health professionals in the detection and control of colorectal cancer;

(5) Establish mechanisms to monitor the quality of screening and diagnostic follow-up procedures for colorectal cancer;

(6) Create and implement appropriate monitoring systems to monitor, including without limitation:

(A) The number of facilities in the state that provide screening services in accordance with evidence-based screening guidelines and procedures;

(B) Physicians, including family practitioners, gastroenterologists, and surgical endoscopists who perform colonoscopies in the state and the regions of the state in which the physicians practice;

(C) Differences in cost across facilities as compared to Medicare payment for procedures; and

(D) Available resources for follow-up diagnostics and treatment as needed;

(7) Develop and disseminate findings derived from the monitoring systems;

(8) Develop and disseminate public information and education programs for the detection and control of colorectal cancer and for promoting the benefits of receiving screenings for the public and for health care professions, to include without limitation education concerning:

(A) High-risk populations;

(B) Target populations; and

(C) The uninsured and underinsured;

(9) Develop provider-oriented programs to promote routine implementation of screening guidelines and patient-oriented programs to increase utilization of screening and diagnostic services; and

(10) Make records of program activities and expenditures available to the Department of Health.

History. Acts 2009, No. 1374, § 1; 2011, No. 1121, § 4.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

Amendments. The 2011 amendment inserted "Both" in the present introductory language of (1)(B).

20-15-1906. Colorectal Cancer Prevention, Early Detection, and Treatment Advisory Committee. [Contingent effective date.]

(a) There is created a Colorectal Cancer Prevention, Early Detection, and Treatment Advisory Committee to advise the Director of the Department of Health on matters of concern under this subchapter.

(b) The director shall appoint:

(1) One (1) member to represent the Department of Health;

(2) One (1) member to the target population of this subchapter;

(3) One (1) member who specializes in primary care or gastrointestinal medicine to represent the Arkansas Medical Society;

(4) One (1) member who specializes in primary care or gastrointestinal medicine to represent the Arkansas Medical, Dental and Pharmaceutical Association;

(5) One (1) member who is a surgical oncologist physician;

(6) One (1) member who is a radiation oncologist physician;

(7) One (1) member to represent the Arkansas Nursing Association;

(8) One (1) member who is a behavioral health scientist;

(9) One (1) member who is a medical oncologist physician;

(10) One (1) member to represent the area health education centers;

(11) One (1) member who is a colorectal cancer survivor;

(12) One (1) member to represent the American Cancer Society; and

(13) One (1) member to represent the Community Health Centers of Arkansas.

(c) The director shall ensure that the membership is representative of the four (4) congressional districts.

(d) Terms of committee members shall be three (3) years except for the initial members whose terms shall be determined by lot so as to stagger terms to equalize as nearly as possible the number of members to be appointed each year.

(e) If a vacancy occurs, the director shall appoint a person who represents the same constituency as the member being replaced.

(f) The committee shall elect one (1) of its members to act as chair for a term of one (1) year.

(g) A majority of the members shall constitute a quorum for the transaction of business.

(h) The committee shall meet at least quarterly to study developments in programs created under this subchapter and to assist the director in improving existing programs and developing new programs.

(i) The department shall provide office space and staff for the committee.

(j) Members of the committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-902 if funds are available.

History. Acts 2009, No. 1374, § 1.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1907. Colorectal Cancer Research Program. [Contingent effective date.]

(a) There is established within the Winthrop P. Rockefeller Cancer Institute at the University of Arkansas for Medical Sciences in collaboration with the Department of Health a Colorectal Cancer Research Program.

(b) The program may conduct without limitation:

(1) Research into the cause, cure, treatment, early detection, and prevention of colorectal cancer and the survivorship of individuals diagnosed with colorectal cancer;

(2) Examinations of behavioral and educational strategies to promote screening and early detection; and

(3) Research addressing health policies and legislative initiatives intended to promote early detection and reduce the burden of colorectal cancer.

(c) The program shall fund innovative research and the dissemination of successful research findings with special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities.

History. Acts 2009, No. 1374, § 1.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

20-15-1908. Oversight Committee on Colorectal Cancer Research. [Contingent effective date.]

(a) There is created the Oversight Committee on Colorectal Cancer Research.

(b) All research grants shall be awarded on the basis of the research priorities established for the Colorectal Cancer Research Program and the scientific merit of the proposed research as determined by a peer review process governed by the committee.

(c) The committee shall consist of seven (7) members appointed by the Director of the Winthrop P. Rockefeller Cancer Institute at the University of Arkansas for Medical Sciences, as follows:

(1) One (1) member to represent the Arkansas Medical Society;

(2) One (1) member to represent the Arkansas Hospital Association;

(3) One (1) member to represent the medical, surgical, or radiation oncology community;

(4) One (1) member who is a colorectal health advocate;

(5) One (1) member to represent the University of Arkansas System who has experience in biomedical research relevant to cancer prevention and control;

(6) One (1) member to represent the University of Arkansas System who has experience in behavioral/psychosocial research relevant to cancer prevention and control; and

(7) One (1) member to represent the University of Arkansas System who has experience in systems research relevant to cancer prevention and control.

(d) Each of the four (4) congressional districts shall be represented by at least one (1) member.

(e)(1) The members shall serve for a period of four (4) years.

(2) The members shall serve staggered terms to be determined by lot at the first meeting of the committee so that one (1) serves one (1) year, two (2) serve two (2) years, two (2) serve three (3) years, and two (2) serve four (4) years.

History. Acts 2009, No. 1374, § 1.

A.C.R.C. Notes. Acts 2009, No. 1374, § 3, provided: "This act becomes effective if funds are appropriated and available for the grant program created in Section 1 of this act".

CHAPTER 16

REPRODUCTIVE HEALTH

SUBCHAPTER.

5. Sexually Transmitted Diseases.
8. Abortion — Parental Notification.
9. Woman's Right to Know Act of 2001.
12. Partial-Birth Abortion Ban Act.

Subchapter 3 — Arkansas Family Planning Act

20-16-304. Public policy — Availability of procedures, supplies, and information — Exceptions.

RESEARCH REFERENCES

ALR. Propriety of Pharmacy and Pharmacist's Refusal to Fill Prescription for Contraceptives. 41 A.L.R.6th 555.

Subchapter 5 — Sexually Transmitted Diseases

SECTION.
20-16-501. Notification required.
20-16-503. Notification — Physician's duty.
20-16-508. Treatment of minors.

20-16-501. Notification required.

(a) Any person who determines by laboratory examination that a specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of those sexually transmitted diseases enumerated in subsection (b) of this section shall notify the Division of Health Maintenance of the Department of Health of such findings.

(b) Notice shall be given for the following conditions or diseases:

(1) Syphilis;

(2) Gonorrhea;

(3) Chancroid;

(4) Lymphogranuloma Venereum; and

(5) Granuloma Inguinale.

(c) Specific reportable sexually transmitted disease tests are:

(1) All reactive or positive and weakly reactive or doubtful serological tests for syphilis;

(2) All reactive or positive and weakly reactive or doubtful spinal fluid serological tests for syphilis;

(3) All positive darkfield microscopic tests for treponema pallidum;

(4) All positive gonococcal smears or cultures; and

(5) All positive tests indicating the presence of Ducrey's bacillus, known as chancroid, or Donovan bodies, known as Granuloma Inguinale, or filterable virus, known as Lymphogranuloma Venereum.

History. Acts 1973, No. 60, §§ 1, 3; A.S.A. 1947, §§ 82-632, 82-634; Acts 2007, No. 827, § 160.

Amendments. The 2007 amendment substituted "sexually transmitted diseases" for "venereal diseases" in (a) and (c).

20-16-503. Notification — Physician's duty.

Laboratory reporting under §§ 20-16-501 — 20-16-506 shall in no way release the attending physician from his or her responsibility to report cases of sexually transmitted diseases to the Division of Health Maintenance of the Department of Health.

History. Acts 1973, No. 60, § 7; A.S.A. 1947, § 82-638; Acts 2007, No. 827, § 161.

Amendments. The 2007 amendment substituted "sexually transmitted diseases" for "venereal diseases."

20-16-508. Treatment of minors.

(a)(1) When a minor who believes himself or herself to have a sexually transmitted disease consents to the provision of medical care or surgical care or services by a hospital or public clinic or consents to the performance of medical care or surgical care or services by a physician who is licensed to practice medicine in this state, the consent:

(A) Is valid and binding as if the minor had achieved his or her majority; and

(B) Is not subject to a later disaffirmance by reason of his or her minority.

(2) The consent of a spouse, parent, guardian, or any other person standing in a fiduciary capacity to the minor shall not be necessary in order to authorize hospital care or services or medical or surgical care or services to be provided to the minor by a physician licensed to practice medicine.

(b) Upon the advice and direction of a treating physician or in the case of a medical staff any one (1) of them, a physician or member of a medical staff may inform the spouse, parent, or guardian of any minor as to the treatment given or needed but shall not be obligated to do so. The information may be given to or withheld from the spouse, parent, or guardian without the consent and over the express objection of the minor.

History. Acts 1969, No. 100, §§ 1-3; A.S.A. 1947, §§ 82-629 — 82-631; Acts 1997, No. 208, § 20; 2007, No. 827, § 162; 2009, No. 952, § 3.

Amendments. The 2007 amendment substituted "sexually transmitted disease" for "venereal disease" in (a)(1).

The 2009 amendment rewrote (a)(1).

Subchapter 6 — Abortion Generally

20-16-601. Refusal to perform, participate, consent, or submit.

RESEARCH REFERENCES

ALR. Women's Reproductive Rights Concerning Abortion, and Governmental Regulation Thereof — Supreme Court Cases. 20 A.L.R. Fed. 2d 1.

Subchapter 7 — Abortion — Viable Fetus

20-16-701. Legislative intent — Construction.

RESEARCH REFERENCES

ALR. Women's Reproductive Rights Concerning Abortion, and Governmental Regulation Thereof — Supreme Court Cases. 20 A.L.R. Fed. 2d 1.

Subchapter 8 — Abortion — Parental Notification

SECTION.
20-16-808. When consent of parent not required.

20-16-801. Consent required.

RESEARCH REFERENCES

ALR. Women's Reproductive Rights Concerning Abortion, and Governmental Regulation Thereof — Supreme Court Cases. 20 A.L.R. Fed. 2d 1.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Public Health and Welfare, 28 U. Ark. Little Rock L. Rev. 389.

20-16-808. When consent of parent not required.

Consent under this subchapter shall not be required to be obtained from a parent if:

(1) Both of the parents' whereabouts are unknown; or

(2)(A) If the minor has only one (1) living parent and the minor states by affidavit that the parent has committed incest with the minor, has raped the minor, or has otherwise sexually abused the minor.

(B) The attending physician shall report the abuse as provided under the Child Maltreatment Act, § 12-18-101 et seq.

History. Acts 1989, No. 270, § 1; 2005, No. 537, § 7; 2009, No. 758, § 26.

A.C.R.C. Notes. Acts 2009, No. 758, § 29, provided: Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.

The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749

Amendments. The 2009 amendment substituted "the Child Maltreatment Act, § 12-18-101 et seq." for "§ 12-12-504 and 12-12-507 "in (2)(B).

Subchapter 9 — Woman's Right to Know Act of 2001

SECTION.
20-16-903. Informed consent.

20-16-901. Title.

RESEARCH REFERENCES

ALR. Women's Reproductive Rights Concerning Abortion, and Governmental Regulation Thereof — Supreme Court Cases. 20 A.L.R. Fed. 2d 1.

20-16-903. Informed consent.

(a) No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

(b) Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

(1)(A) Before and in no event on the same day as the abortion, the woman is told the following by telephone or in person by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

(i) The name of the physician who will perform the abortion;

(ii) The medical risks associated with the particular abortion procedure to be employed;

(iii) The probable gestational age of the fetus at the time the abortion is to be performed;

(iv) The medical risks associated with carrying the fetus to term; and

(v) That a spouse, boyfriend, parent, friend, or other person cannot force her to have an abortion.

(B) The information required by this subdivision (b)(1):

(i) Shall be provided during a consultation in which the physician or his or her agent is able to ask questions of the woman and the woman is able to ask questions of the physician;

(ii)*(a)* May be provided by telephone without conducting a physical examination or tests on the woman.

(b) If the information is supplied by telephone, the information may be based both on facts supplied to the physician or his or her agent by the woman and on whatever other relevant information is reasonably available to the physician or his or her agent; and

(iii) Shall not be provided by a tape recording.

(C) If a physical examination, tests, or other new information subsequently indicates the need in the medical judgment of the physician for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time before the performance of the abortion.

(D) This section does not preclude the provision of required information through a translator in a language understood by the woman;

(2)(A) Before and in no event on the same day as the abortion, the woman is informed by telephone or in person by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

(i) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(ii) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(iii) That she has the option to review the printed or electronic materials described in § 20-16-904 and that those materials:

(a) Have been provided by the state; and

(b) Describe the fetus and list agencies that offer alternatives to abortion; and

(iv) That if the woman chooses to exercise her option to view the materials:

(a) In a printed form, the materials shall be mailed to her by a method chosen by her; or

(b) Via the Internet, she shall be informed before and in no event on the same day as the abortion of the specific address of the website where the materials can be accessed.

(B) The information required by this subdivision (b)(2) may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials;

(3) Before the abortion, the woman certifies in writing that the information described in subdivision (b)(1) of this section and her options described in subdivision (b)(2) of this section have been furnished to her and that she has been informed of her option to review the information referred to in subdivision (b)(2)(A)(iii) of this section;

(4) Before the abortion, the physician who is to perform the procedure or the physician's agent receives a copy of the written certification prescribed by subdivision (b)(3) of this section; and

(5) Before the abortion, the physician confirms with the patient that she has received information regarding:

(A) The medical risks associated with the particular abortion procedure to be employed;

(B) The probable gestational age of the fetus at the time the abortion is to be performed;

(C) The medical risks associated with carrying the fetus to term; and

(D) That a spouse, boyfriend, parent, friend, or other person cannot force her to have an abortion.

(c) The Arkansas State Medical Board shall promulgate regulations to ensure that physicians who perform abortions, referring physicians, or agents of either physician comply with all the requirements of this section.

History. Acts 2001, No. 353, § 3; 2001, No. 1564, §§ 2-6; 2007, No. 1605, § 1; 2009, No. 952, § 4.

Amendments. The 2007 amendment added (b)(1)(E) and (b)(7)(D); and made related changes.

The 2009 amendment redesignated the section; rewrote present (b)(1)(B)(i), inserted present (b)(1)(B)(ii)(a) and (b)(1)(B)(iii), and deleted former (b)(2)(B); substituted "(b)(2)" for "(b)(3)" in present (b)(2)(B) and (b)(3), substituted "(b)(2)(A)(iii)" for "(b)(3)" in present (b)(3), substituted "(b)(3)" for "(b)(5)" in present (b)(4), and substituted "fetus" for "unborn child" in present (b)(5)(B); and made related and minor stylistic changes.

Subchapter 11 — Unborn Child Pain Awareness and Prevention Act

20-16-1101. Title.

RESEARCH REFERENCES

ALR. Women's Reproductive Rights Concerning Abortion, and Governmental Regulation Thereof — Supreme Court Cases. 20 A.L.R. Fed. 2d 1.

Subchapter 12 — Partial-Birth Abortion Ban Act

SECTION.
20-16-1201. Title.
20-16-1202. Definitions.
20-16-1203. Partial-birth abortions prohibited — Penalty — Exception.
20-16-1204. License suspension or revocation and fines.
20-16-1205. Civil liability.
20-16-1206. Hearings before the Arkansas State Medical Board.
20-16-1207. Provision for anonymity of female.

Effective Date Note. Acts 2009, No. 196, § 3, provided: "It is found and determined by the General Assembly of the State of Arkansas that partial-birth abortion poses serious risks to the health of a female undergoing the procedure; that those risks include, among other things: an increase in a female's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a female to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position and a risk of lacerations and secondary hemorrhaging due to the physician blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-16-1201. Title.

This subchapter shall be known and may be cited as the "Partial-Birth Abortion Ban Act".

History. Acts 2009, No. 196, § 1.

20-16-1202. Definitions.

As used in this subchapter:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(A) Purposely vaginally delivers a living human fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the female or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the female, for the purpose of performing an overt act that the person knows will kill the partially delivered living human fetus; and

(B) Performs the overt act, other than completion of delivery of a living human fetus, that kills the partially delivered living human fetus; and

(2)(A) "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery in this state, or any other individual legally authorized by the state to perform abortions.

(B) However, any individual who is not a physician or not otherwise legally authorized by the state to perform abortions but who nevertheless directly performs a partial-birth abortion is subject to this subchapter.

History. Acts 2009, No. 196, § 1.

20-16-1203. Partial-birth abortions prohibited — Penalty — Exception.

(a)(1) Any person who knowingly performs a partial-birth abortion and thereby kills a human fetus is guilty of a Class D felony.

(2) This subsection (a) does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

(b) A female upon whom a partial-birth abortion is performed shall not be prosecuted under this subchapter.

History. Acts 2009, No. 196, § 1.

20-16-1204. License suspension or revocation and fines.

(a)(1) After proper notice and an opportunity to be heard, the Arkansas State Medical Board may assess a civil fine against a physician who violates this subchapter.

(2) The civil fine shall not exceed:

(A) Twenty-five thousand dollars ($25,000) for the first violation;

(B) Fifty thousand dollars ($50,000) for the second violation;

(C) One hundred thousand dollars ($100,000) for the third violation; and

(D) For each subsequent violation, any amount over one hundred thousand dollars ($100,000) sufficient to deter future violations.

(b) The board may suspend or revoke the physician's license in accordance with procedures established under § 17-95-410.

(c)(1) All fines assessed and collected under this section shall be remitted to the Treasurer of State.

(2) The Treasurer of State shall deposit the entire amount of any fines collected under this section into the State Treasury as general revenues.

(d) The civil fine assessed under this section is in addition to the criminal penalty imposed under § 20-16-1203.

History. Acts 2009, No. 196, § 1.

20-16-1205. Civil liability.

(a) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of eighteen (18) years at the time of the abortion, the maternal grandparents of the fetus, may obtain appropriate relief in a civil action unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(b) Relief under subsection (a) of this section shall include:

(1) Money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

(2) Statutory damages equal to three (3) times the cost of the partial-birth abortion.

(c) Damages shall not be assessed against the female upon whom a partial-birth abortion is performed.

History. Acts 2009, No. 196, § 1.

20-16-1206. Hearings before the Arkansas State Medical Board.

(a) A physician accused of a violation of this subchapter may seek a hearing before the Arkansas State Medical Board to determine whether the physician's conduct was necessary to save the life of the female under § 20-16-1203.

(b) Findings from a hearing held under subsection (a) of this section are admissible at the trial of the physician on the issue of whether the physician's conduct was necessary to save the life of the female under § 20-16-1203.

(c) Upon a motion of the physician, the circuit court shall delay the beginning of the trial for not more than ninety (90) days to permit a hearing under subsection (a) of this section to take place.

History. Acts 2009, No. 196, § 1.

20-16-1207. Provision for anonymity of female.

(a) In every proceeding or action under this subchapter, the circuit court shall rule whether the anonymity of any female upon whom a partial-birth abortion is performed should be preserved from public disclosure if the female does not give her consent to the disclosure.

(b)(1) Upon its own motion or upon motion by a party to the proceeding or action under this subchapter, the circuit court shall make a ruling concerning the anonymity of any female upon whom a partial-birth abortion is performed.

(2) Upon determining that the anonymity should be preserved, the circuit court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the female's identity from public disclosure.

(3) Each order under subdivision (b)(2) of this section shall be accompanied by a specific written finding explaining:

(A) Why the anonymity of the female should be preserved from public disclosure;

(B) Why the order is essential to that end;

(C) How the order is narrowly tailored to serve that interest; and

(D) Why no reasonable, less restrictive alternative exists.

(c) In the absence of written consent of the female upon whom a partial-birth abortion has been performed, any person other than a public official who brings an action under this subchapter shall do so under a pseudonym.

(d) This section shall not be construed to conceal the identity of the plaintiff or of a witness from the defendant.

History. Acts 2009, No. 196, § 1.

CHAPTER 17

DEATH AND DISPOSITION OF THE DEAD

SUBCHAPTER.

1. General Provisions.
5. Anatomical Gifts Generally.
6. Arkansas Anatomical Gift Act.
7. Unclaimed Bodies.
9. Cemeteries Generally.
10. Cemetery Act for Perpetually Maintained Cemeteries.
12. Revised Arkansas Anatomical Gift Act.
13. Insolvent Cemetery Grant Fund Act.

Subchapter 1 — General Provisions

SECTION.

20-17-102. Arkansas Final Disposition Rights Act of 2009.
20-17-104. Withholding cardiopulmonary resuscitation in nursing facilities for unwitnessed deaths.

Effective Dates. Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-102. Arkansas Final Disposition Rights Act of 2009.

(a)(1) This section may be cited as the "Arkansas Final Disposition Rights Act of 2009".

(2) As used in this section:

(A) "DD Form 93" means a United States Department of Defense Record of Emergency Data or its successor form;

(B) "Died while serving" means the death of a person in a capacity when the secretary of the military service has the authority to provide for the recovery, care, and disposition of the remains of the person as provided under 10 U.S.C. § 1481(a)(1)-(8) as in effect on January 1, 2011; and

(C) "Final disposition" means the burial, interment, cremation, removal from Arkansas, or other authorized disposition of a dead body or fetus.

(b)(1)(A) Except as provided under subdivision (b)(2) of this section, an individual of sound mind and eighteen (18) or more years of age may execute at any time a declaration specifying the final disposition of his or her bodily remains at his or her death, provided the disposition is in accordance with existing laws, rules, and practices for disposing of human remains.

(B) The declaration of final disposition executed under this section shall be signed by the declarant or another at the declarant's direction and shall be witnessed by two (2) individuals.

(C) Additional consent of any other person is not required if the declaration of final disposition contains a disposition authorized under this section and is otherwise valid under this section.

(2) Notwithstanding any other declaration made under this section or any other law, if the decedent died while serving in any branch of the armed forces of the United States, the National Guard, or a reserve component of the armed forces, the decisions regarding the final disposition for the decedent shall be made by the person authorized to direct disposition on the DD Form 93 completed by the decedent prior to death.

(c) Except as provided under subdivision (b)(2) of this section, a person having possession, charge, or control of the declarant's human remains following the death of a person who has executed a declaration of final disposition shall not knowingly dispose of the body in a manner inconsistent with the declaration.

(d)(1) The right to control the disposition of the remains of a deceased person, the location, manner, and conditions of disposition, and arrangements for funeral goods and services to be provided vests in the following in the order named, provided such person is eighteen (18) years of age or older and is of sound mind:

(A) First, if the decedent died while serving in any branch of the armed forces of the United States, the National Guard, or a reserve component of the armed forces, the decisions regarding the final disposition for the decedent shall be made by the person authorized to

direct disposition on the DD Form 93 completed by the decedent prior to death;

(B) Second, a person appointed by the decedent in the decedent's declaration of final disposition executed before his or her death, in accordance with this section;

(C) Third, the surviving spouse;

(D) Fourth, the sole surviving child of the decedent or if there is more than one (1) child of the decedent, the majority of the surviving children;

(E)(i) Fifth, the surviving parent or parents of the decedent.

(ii) If one (1) of the surviving parents is absent, the remaining parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving parent;

(F) Sixth, the surviving brother or sister of the decedent or if there is more than one (1) sibling of the decedent, the majority of the surviving siblings;

(G) Seventh, the surviving grandparent of the decedent or if there is more than one (1) surviving grandparent, the majority of the grandparents;

(H) Eighth, the surviving grandchild of the decedent or if there is more than one (1) surviving grandchild, the majority of the grandchildren;

(I) Ninth, the guardian of the person of the decedent at the time of the decedent's death, if one had been appointed;

(J)(i) Tenth, the person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent.

(ii) If there is more than one (1) person of the same degree, any person of that degree may exercise the right of disposition;

(K) Eleventh, any representative of state government or a political subdivision thereof that has the statutory obligation to provide for the disposition of the remains of the decedent, including but not limited to any entity authorized to take possession of the remains under § 20-17-701 et seq.; and

(L) In the absence of any person under this subsection, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including without limitation the personal representative of the decedent's estate or the funeral director with custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under this subsection.

(2)(A) Within each class, less than the majority of the class shall be vested with the rights of this section if they have used reasonable efforts to notify all other members of the class of their instructions and are not aware of any opposition to those instructions on the part of more than one-half (½) of all surviving children.

(B) In this subdivision, "class" means surviving children, siblings, grandparents, or grandchildren, where applicable.

(e)(1) A person entitled under this section to the right of disposition shall forfeit that right, with the right passing to the next qualifying person as listed in this section, in the following circumstances:

(A)(i) Any person charged with murder under § 5-10-101, § 5-10-102, or § 5-10-103, or manslaughter under § 5-10-104, in connection with the decedent's death, and whose charges are known to the funeral director.

(ii) If the charges against such person are terminated by an acquittal, dismissal, or nolle prosequi, the right of disposition is returned to the person;

(B) Any person who does not exercise his or her right of disposition within two (2) days of notification of the death of the decedent or within five (5) days of the decedent's death, whichever is earlier;

(C) Any person who possesses the right of disposition, but who is unwilling to assume the liability for the costs of such arrangements and disposition if sufficient resources are not available in the decedent's estate to pay such costs at the time the costs become due and payable;

(D)(i) When the person entitled to the right of disposition and the decedent were estranged at the time of death.

(ii)*(a)* As used in this section, "estranged" means a physical and emotional separation from the decedent at the time of death which has existed for a period of time that clearly demonstrates an absence of due affection, trust, and regard for the decedent.

(b) This shall also include the filing of a complaint for divorce by either party that remains pending at the time of the decedent's death or the separation by living apart of the decedent and spouse for a period of more than ninety (90) days preceding the decedent's death; and

(E) Where the Department of Human Services has custody of the decedent and a person authorized under subsection (d)(1) of this section has not claimed the right to possession of the decedent's remains within forty-eight (48) hours following the decedent's death.

(2) If there is a dispute between those sharing the right of disposition as to the decisions regarding the decedent's remains, the circuit court for the county where the decedent resided may award the right of disposition to the person it determines to be the most fit and appropriate to carry out the right of disposition. The following provisions shall apply to the court's determination under this section:

(A) If the persons holding the right of disposition are two (2) or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a funeral director with custody of the remains may file a petition asking the circuit court to make a determination in the matter;

(B) In making a determination under this subdivision (e)(2), the circuit court shall consider the following:

(i) The reasonableness and practicality of the proposed funeral arrangements and disposition;

(ii) The degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(iii) The desires of the person or persons who are ready, able, and willing to pay the cost of the funeral arrangements and disposition;

(iv) The convenience and needs of other families and friends wishing to pay respects;

(v) The desires of the decedent; and

(vi) The degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;

(C)(i) In the event of a dispute regarding the right of disposition, a funeral director is not liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains.

(ii) If the funeral director retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm or refrigerate and shelter the body, or both, in order to preserve it while awaiting the final decision of the circuit court and may add the cost of embalming and refrigeration and sheltering to the final disposition costs.

(iii) If a funeral director brings an action under this section or is made a party to an action concerning the right of disposition of the decedent's remains, either individually or as an agent of any entity, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition.

(iv) This section may not be construed to require or to impose a duty upon a funeral director or bring an action under this section.

(v) A funeral director may not be held criminally or civilly liable for choosing not to bring an action under this section; and

(D)(i) Except to the degree it may be considered by the circuit court under this subdivision (e)(2), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have.

(ii) The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

(f)(1) Any person signing a funeral service agreement, cremation authorization form, or any other authorization for disposition shall be deemed to warrant the truthfulness of any facts set forth therein, including the identity of the decedent whose remains are to be buried, cremated, or otherwise disposed of, and the party's authority to order such disposition.

(2) A funeral establishment, cemetery, or crematory shall have the right to rely on such funeral service contract or authorization and shall

have the authority to carry out the instructions of the person or persons whom the funeral home, cemetery, or crematory reasonably believes holds the right of disposition.

(3) Employees of funeral homes, cemeteries, or crematories shall have no responsibility to contact or to independently investigate the existence of any next-of-kin or relative of the decedent.

(4) If there is more than one (1) person in a class who are equal in priority and the funeral home, cemetery, or crematory employee has no knowledge of any objection by other members of such class, that employee shall be entitled to rely on and act according to the instructions of the first such person in the class to make funeral and disposition arrangements, provided that no other person in such class provides written notice of his or her objections to that employee.

(g) A funeral director shall have complete authority to control the final disposition and to proceed under this section to recover reasonable charges for the final disposition when the following applies:

(1) If after a good faith effort has been made with no success to contact the individuals listed under subdivision (d)(1) of this section, the funeral director has no knowledge that any of the persons described in subdivision (d)(1) of this section exist or if none of the persons so described can be found after reasonable inquiry or contacted by reasonable means; and

(2)(A) No person or entity has assumed responsibility for disposition of the remains within five (5) days of the decedent's death or within twenty-four (24) hours after receiving written notice of the facts, whichever is longer, but in no event longer than seven (7) days after the date of the decedent's death.

(B) Written notice may be delivered by hand, United States Postal Service, facsimile transmission, or other reliable means of electronic transmission.

(h)(1) Crematory operators shall not be liable for civil damages for cremating human remains if a declaration of final disposition indicating that the declarant wished to be cremated has been executed under this section.

(2) Crematory operators shall not be liable for civil damages for failing to cremate human remains if:

(A) The declarant executed a declaration of final disposition indicating that he or she did not wish to be cremated; or

(B) The crematory operator knows that there is a dispute as to the validity of the declaration of final disposition.

(i) If a decedent did not execute a declaration of final disposition, the person having lawful possession, charge, or control of the decedent's human remains has the right to dispose of the remains in any manner that is consistent with existing laws, rules, and practices for disposing of human remains, including the right to have the remains cremated.

(j) A funeral home shall not be liable for any damages for carrying out the disposition of a decedent's human remains in any lawful manner that is consistent with a decedent's declaration of final disposition.

(k)(1) In the event that a person claiming the right of disposition directs the cremation of the remains of a decedent or in the event that a funeral director assumes responsibility for the disposition of the remains of a decedent under this section and proceeds to cremate the remains of the decedent, and thereafter no person or entity identified in (d)(1) of this section claims custody of the cremated remains for a period of ninety (90) days following the cremation, the funeral director may dispose of the cremated remains of the decedent.

(2) A funeral home, cemetery, crematory, or an employee who disposes of the remains of a decedent under the terms of this section shall not be subject to criminal or civil liability or subject to disciplinary action for such actions.

(l) A funeral home, cemetery, crematory, or an employee who relies in good faith upon the instruction of an individual claiming the right of disposition shall not be subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instruction.

(m) Nothing in this section shall be construed to affect, repeal, or replace the provisions and procedures set forth in the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq.

History. Acts 1991, No. 376, §§ 1-3; 2003, No. 666, § 1; 2007, No. 839, § 4; 2009, No. 402, § 1; 2011, No. 29, §§ 1, 2; 2011, No. 1121, § 5.

Amendments. The 2007 amendment substituted "Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq." for "Arkansas Anatomical Gift Act, § 20-17-601 et seq." in (g).

The 2009 amendment inserted "of 2009" in (a)(1); substituted "specifying" for "governing" in (b)(1); rewrote (d) through (f); inserted (g) through (l); and redesignated the remaining subsection accordingly.

The 2011 amendment by No. 29 rewrote (a)(2); redesignated former (b)(1) as (b)(1)(A) and inserted "Except as provided under subdivision (b)(2) of this section"; redesignated former (b)(2) and (b)(3) as (b)(1)(B) and (b)(1)(C); inserted present (b)(2): inserted "Except as provided under subdivision (b)(2) of this section" in (b)(1)(C); and inserted present (d)(1)(A) and redesignated the remaining subdivisions accordingly.

The 2011 amendment by No. 1121 redesignated the subdivisions in (g); in (g)(1), substituted "under subdivision (d)(1) of this section" for "under this subsection" and substituted "in subdivision (d)(1)" for "in subsection (d)(1)."

CASE NOTES

Compliance with Burial Place Directive.

Under this section, a trial court was required to comply with a decedent's directive concerning his burial place and, therefore, exhumation should have been permitted. Even if the executrix waived her right to make disposition decisions at the time of death, her waiver did not undermine the decedent's right to decide the burial issue. Long v. Alford, 2010 Ark. App. 233, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 319 (Apr. 14, 2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 403 (Aug. 6, 2010).

20-17-104. Withholding cardiopulmonary resuscitation in nursing facilities for unwitnessed deaths.

(a) As used in this section:

(1) "Dependent lividity" means clear demarcation of pooled blood within the body;

(2) "Nursing facility" means the same as long-term care facility as defined in § 20-10-101; and

(3) "Rigor" means that major joints such as the jaw, shoulders, elbows, hips, or knees are immovable.

(b) Licensed nurses employed by nursing facilities may withhold cardiopulmonary resuscitation from residents of the facility, regardless of the presence or absence of a Do Not Resuscitate Order when:

(1) The death of the resident was unwitnessed; and

(2) The body evidences clear and unmistakable:

(A) Dependent lividity; or

(B) Rigor.

(c) In cases of unwitnessed deaths under subsection (b) of this section, the following conditions also must be present:

(1) Respirations are absent for at least thirty (30) seconds;

(2) Carotid pulse is absent for at least thirty (30) seconds;

(3) Lung sounds auscultated by stethoscope bilaterally are absent for at least thirty (30) seconds; and

(4) Both pupils, if accessible, are nonreactive to light.

(d) The nursing facility shall document the presence of the above-listed conditions in the resident's records.

(e)(1) Nursing facilities and licensed nurses of nursing facilities who withhold cardiopulmonary resuscitation under this section are not liable for administrative sanctions, civil damages, or subject to criminal prosecution for their actions or the actions of others based on the withholding of cardiopulmonary resuscitation.

(2) A person who acts in good faith reliance of a nursing facility's or nursing facility employee's withholding cardiopulmonary resuscitation under this section is not liable for administrative sanctions, civil damages, or subject to criminal prosecution for the person's actions.

History. Acts 2009, No. 718, § 1; 2011, No. 1121, § 6.

Amendments. The 2011 amendment rewrote (b)(2); and deleted (b)(3).

Subchapter 2 — Arkansas Rights of the Terminally Ill or Permanently Unconscious Act

20-17-210. Miscellaneous provisions.

CASE NOTES

Cited: Boyle v. State, 363 Ark. 356, 214 S.W.3d 250 (2005).

Subchapter 5 — Anatomical Gifts Generally

SECTION.
20-17-501. [Repealed.]

Effective Dates. Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-501. [Repealed.]

Publisher's Notes. This section, concerning organ donation and driver's license form to contain statement of intent, was repealed by Acts 2007, No. 839, § 5. The section was derived from Acts 1993, No. 409, §§ 1, 2.

Subchapter 6 — Arkansas Anatomical Gift Act

SECTION.
20-17-601 — 20-17-613. [Repealed.]
20-17-615. [Repealed.]

Effective Dates. Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-601 — 20-17-613. [Repealed.]

Publisher's Notes. These sections, concerning anatomical gifts, were repealed by Acts 2007, No. 839, § 6. The sections were derived from the following sources:

20-17-601. Acts 1989, No. 436, § 1.
20-17-602. Acts 1989, No. 436, § 2; 1997, No. 75, § 2.
20-17-603. Acts 1989, No. 436, § 3; 1999, No. 707, § 1.
20-17-604. Acts 1989, No. 436, § 4.
20-17-605. Acts 1989, No. 436, § 5.
20-17-606. Acts 1989, No. 436, § 6.
20-17-607. Acts 1989, No. 436, § 7.
20-17-608. Acts 1989, No. 436, § 8.
20-17-609. Acts 1989, No. 436, § 9.
20-17-610. Acts 1989, No. 436, § 10.
20-17-611. Acts 1989, No. 436, § 11.
20-17-612. Acts 1989, No. 436, § 12.
20-17-613. Acts 1989, No. 436, § 13.

20-17-615. [Repealed.]

Publisher's Notes. This section, concerning short title, was repealed by Acts 2007, No. 839, § 7. The section was derived from Acts 1989, No. 436, § 14.

Subchapter 7 — Unclaimed Bodies

SECTION.
20-17-705. Wishes of deceased for disposition honored.

Effective Dates. Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-705. Wishes of deceased for disposition honored.

(a) No unclaimed dead human body shall be surrendered to the University of Arkansas for Medical Sciences under this subchapter if there is proof that the deceased has during his or her last illness expressed his or her desire to be buried or otherwise interred.

(b) Any adult may by will or otherwise donate his or her body to the University of Arkansas for Medical Sciences under the Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq.

History. Acts 1959, No. 22, § 7; A.S.A. 1947, § 82-405.5; Acts 1993, No. 403, § 13; 2007, No. 839, § 8.

Amendments. The 2007 amendment substituted "Revised Arkansas Anatomical Gift Act, § 20-17-1201 et seq." for

"Arkansas Anatomical Gift Act, § 20-17-601 et seq." in (b).

Subchapter 9 — Cemeteries Generally

SECTION.
20-17-904. Perpetual care trust.

Effective Dates. Acts 2007, No. 240, § 5: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current extremely harsh remedy under the rule against perpetuities that renders a grantor's entire grant void if the grant violates the rule is outdated and should be replaced; that the common law rule fosters litigation at great cost to the citizens of this state because of its many complexities, with often devastating consequences to estates; and that the revision by this act of the common law remedy to permit the likely occurrence that a grant will vest or to permit a court to reform a grant that does not vest in the manner that most likely approximate the transferor's manifested plan is immediately necessary for the good of the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-903. Application to locate or extend boundaries.

CASE NOTES

Corporate Limits.

Conway, Ark., Ordinance 0-94-54 may be read harmoniously with § 20-17-903; municipalities that had passed a relevant zoning ordinance in accordance with § 14-56-416 could regulate the construction and expansion of cemeteries pursuant to the ordinance, and municipalities that had not done so had only the benefit of this section, §§ 14-54-802, and 14-54-803, such that the city's denial of the landowner's request for a conditional-use-permit precluded the establishment of a cemetery on his property. Brock v. Townsell, 2009 Ark. 224, 309 S.W.3d 179 (2009).

20-17-904. Perpetual care trust.

(a) By trust instrument or will, any person may establish a trust fund in perpetuity with the income from the trust fund to go to the upkeep of certain specified burial lots or plots in one (1) or more cemeteries or burial grounds in the State of Arkansas.

(b)(1) No amount placed in trust pursuant to subsection (a) of this section by any one (1) trustor or testator shall be in excess of the sum of two hundred thousand dollars ($200,000).

(2) The trust fund shall be:

(A) Invested in state, municipal, or federal obligations;

(B) Deposited for interest in a savings and loan association whose funds are insured by the Federal Savings and Loan Insurance Corporation; or

(C) Placed on interest-bearing time deposit in a bank whose funds are guaranteed by the Federal Deposit Insurance Corporation.

(3) The trust fund shall be so invested or deposited as directed by the circuit court of the county in which are located the burial grounds specified in the trust instrument of the trustor or will of the testator.

(c) The trustee of the fund shall file an annual report in the circuit court of the county in which the burial grounds are located showing the receipts and disbursements from the trust fund.

(d) The provisions of subsections (a)-(c) of this section are in addition to any other laws relating to cemeteries and trust funds.

(e) No rule against perpetuities shall apply to property or funds set aside or trust created for the perpetual care of burial lots in cemeteries.

History. Acts 1939, No. 122, § 1; 1965, No. 445, §§ 1-4; 1985, No. 597, § 1; A.S.A. 1947, §§ 50-108, 82-427 — 82-430; Acts 2003, No. 766, § 1; 2007, No. 240, § 2.

Amendments. The 2007 amendment substituted "No rule against perpetuities shall apply" for "The rule against perpetuities shall not apply" in (e).

RESEARCH REFERENCES

Ark. L. Notes. Circo, How Does the Arkansas Trust Code Affect Real Estate Transactions?, 2007 Ark. L. Notes 45.

Subchapter 10 — Cemetery Act for Perpetually Maintained Cemeteries

SECTION.
20-17-1002. Definitions.
20-17-1004. Arkansas Cemetery Board — Creation — Members.
20-17-1006. Arkansas Cemetery Board — Powers and duties.
20-17-1007. Examination of cemetery.
20-17-1009. Permit — Investigation by Department of Health.
20-17-1010. Permit — Investigation and issuance by the Arkansas Cemetery Board.
20-17-1011. Permit — Amendment.
20-17-1012. Permit — Transfer of ownership.
20-17-1013. Permanent maintenance fund generally.
20-17-1014. Permanent Maintenance Fund Trustees.
20-17-1015. Permanent maintenance fund — Annual report.
20-17-1016. Permanent maintenance fund — Required deposits.
SECTION.
20-17-1018. Violations, criminal penalties, and remedies.
20-17-1019. Conveyance of lots.
20-17-1021. Disposition of contributions and fees.
20-17-1022. Records required.
20-17-1023. Annual report of condition of cemetery company.
20-17-1024. [Repealed.]
20-17-1025. Protection of cemeteries — Power to lend.
20-17-1027. Duties of State Securities Department.
20-17-1028. Contracts with municipality or county where a cemetery is located.
20-17-1029. Cemetery advisory boards — Membership — Organization — Authority.
20-17-1030. Infant interment gardens.

Effective Dates. Acts 2007, No. 240, § 5: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the current extremely harsh remedy under the rule against perpetuities that renders a grantor's entire grant void if the grant violates the rule is outdated and should be replaced; that the common law rule fosters litigation at great cost to the citizens of this state because of its many complexities, with often devastating consequences to estates; and that the revision by this act of the common law remedy to permit the likely occurrence that a grant will vest or to permit a court to reform a grant that does not vest in the manner that most likely approximate the transferor's manifested plan is immediately necessary for the good of the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 430, § 4: Mar. 22, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act provides an efficient, cost-effective solution for cemeteries that have been declared insolvent and been placed in court-ordered receivership; that a partnership between the cemetery and local government will permit long-term progress in cemetery maintenance and preservation; and that cemeteries continuing in receivership for more than five (5) years adversely impact the state and local communities where the cemeteries are located and are a burden upon the courts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-1002. Definitions.

As used in this subchapter:

(1) "Care and maintenance" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery;

(2) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of human remains. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one (1) or more thereof;

(3) "Cemetery company" means an individual, partnership, corporation, limited liability company, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery or making an application with the Arkansas Cemetery Board to own or control the lands or conduct the business;

(4) "Columbarium" means a structure or room or space in a building or structure used or intended to be used for the interment of cremated human remains;

(5) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;

(6) "Infant interment garden" means a designated area in a perpetual care cemetery for the interments of infants and children no more than twenty-four (24) months of age;

(7) "Interment" means the lawful disposition of the remains of a deceased person as provided by law;

(8) "Lawn crypt" means an interment space sometimes referred to as a "belowground crypt", "westminister", or "turf top crypt" in a preplaced chamber or burial vault either side-by-side or at multiple depths, covered by earth and sod;

(9) "Lot or grave space" means a space of ground in a cemetery used or intended to be used for interment therein;

(10) "Mausoleum" means a community-type structure or room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches;

(11) "Niche" means a space in a columbarium that is used or intended to be used for the interment of the cremated remains of one (1) or more deceased persons;

(12) "Permit holder" means a cemetery company that holds a permit issued by the board to own or operate a perpetual care cemetery; and

(13) "Perpetual care cemetery" means a cemetery for the benefit of which a permanent maintenance fund has been established in accordance with this subchapter.

History. Acts 1977, No. 352, § 2; A.S.A. 1947, § 82-426.2; Acts 1997, No. 295, § 1; 2001, No. 1242, § 1; 2007, No. 827, § 163; 2009, No. 714, § 1; 2009, No. 715, §§ 1, 2: 2011, No. 590, § 1.

Amendments. The 2007 amendment deleted (13).

The 2009 amendment by No. 714 inserted (8) and redesignated the remaining subdivisions accordingly; and made related changes..

The 2009 amendment by No. 715 inserted "limited liability company" in (4) and made a related change; and substituted "permanent maintenance fund" for "perpetual care fund" in (12).

The 2011 amendment deleted former (1), inserted present (6), and redesignated the subdivisions accordingly; substituted "Arkansas Cemetery Board" for "board" in (3); and substituted "interment" for "internment" in (8).

Effective Dates. Acts 2009, No. 714, § 4, provided: "This act takes effect January 10, 2010."

20-17-1004. Arkansas Cemetery Board — Creation — Members.

(a) The Arkansas Cemetery Board is to consist of seven (7) members selected as follows:

(1) The Securities Commissioner or his or her designated deputy shall be a voting member of the board;

(2) Six (6) members shall be appointed by the Governor for terms of four (4) years, as follows:

(A) Four (4) of the six (6) members appointed by the Governor shall be owners or operators of a licensed perpetual care cemetery in this state;

(B) One (1) member shall be appointed by the Governor and shall be a citizen of the State of Arkansas, of good character, and a qualified

elector, but this person shall not have any interest in a cemetery or funeral home either within or without the State of Arkansas; and

(C) One (1) member shall be sixty (60) years of age or older, appointed from the state at large, subject to the confirmation of the Senate, and shall represent the elderly. This member shall not be actively engaged in or retired from any profession or occupation which is regulated by the board.

(b)(1) The Governor shall appoint one (1) alternate member for the same term and having the same qualifications as a regular member. This member shall substitute for any regular member when a conflict of interest disqualifies a regular member.

(2) If a matter comes before the board involving a cemetery in which a member has a financial interest, then the member is disqualified from participating in the discussion or vote on the matter, and the alternate member shall substitute for the disqualified member.

(3) The alternative member shall substitute for an absent member if necessary to constitute a quorum under § 20-17-1005(c).

(c) Vacancies on the board due to death, resignation, or other cause of any appointed member shall be filled by appointment of the Governor for the unexpired portion of the term in the same manner as was required for the initial appointment.

(d) Members shall serve without pay or other compensation for their services except that members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1977, No. 352, § 4; 1981, No. 512, § 1; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; A.S.A. 1947, §§ 6-623 — 6-626, 82-426.4; Acts 1997, No. 250, § 190; 1997, No. 295, § 2; 2009, No. 715, § 3; 2011, No. 590, § 2.

Amendments. The 2009 amendment, in (b), deleted "in that instance only" following "disqualified member" in (b)(2), inserted (b)(3), and made minor stylistic changes.

The 2011 amendment, in (a)(2)(A), substituted "a licensed perpetual care cemetery" for "licensed cemeteries" and deleted "and these members shall be appointed from lists of five (5) names for each appointment to be made which are submitted to the Governor by the Arkansas Cemetery Association" at the end.

20-17-1006. Arkansas Cemetery Board — Powers and duties.

The Arkansas Cemetery Board shall have the authority to:

(1) Conduct at any time and from time to time such reasonable periodic, special, or other examination of any cemetery or cemetery company, including, but not limited to, an examination of the physical condition or appearance of the cemetery, the financial condition of the company and any trust funds maintained by the company, and such other examinations as the board or Securities Commissioner deems necessary or appropriate in the public interest. The examinations shall be made by members or representatives of the board or by a certified public accountant or registered public accountant as authorized in § 20-17-1007;

(2) Issue or amend permits to operate a cemetery in accordance with this subchapter;

(3) Suspend or revoke permits to operate a cemetery when any cemetery fails to comply with this subchapter, rules promulgated pursuant to this subchapter, or any order of the board;

(4) Make rules, regulations, and forms to enforce this subchapter;

(5) Require every cemetery company to observe minimum accounting principles and practices and make and keep such books and records in accordance therewith for such period of time as the board may by rule prescribe;

(6)(A) Subpoena witnesses, books, and records in connection with alleged violations of this subchapter or rules or orders of the board. With the approval of the chair of the board or two (2) board members, the Securities Commissioner may issue subpoenas.

(B) In case of contumacy or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the board, may issue to the person an order requiring him or her to appear before the board or the person designated by the board. Failure to obey the order of the court may be punished by the court as a contempt of court;

(7) Require additional contributions to the permanent maintenance fund of the cemetery where provided for in this subchapter, including, but not limited to, contributions not to exceed three thousand dollars ($3,000) whenever any cemetery company fails to properly care for and maintain or preserve the cemetery;

(8)(A) Apply to the Pulaski County Circuit Court to enjoin any act or practice and to enforce compliance with this subchapter or any rule, regulation, or order pursuant to this subchapter whenever it appears to the board, upon sufficient grounds or evidence satisfactory to the board, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this subchapter or any rule or regulation pursuant to this subchapter.

(B) The court may not require the board to post a bond;

(9) Apply to the circuit court of the county in which the cemetery is located for appointment of a receiver or conservator of the cemetery corporation or its permanent maintenance fund when it appears to the board that a cemetery corporation is insolvent or that the cemetery corporation, its officers, directors, agents, or the trustees of its permanent maintenance fund have violated this subchapter and the rules promulgated under this subchapter or have failed to comply with any board order;

(10) By rule increase the amount of a deposit required by § 20-17-1016 if the board determines that a greater sum is necessary to assure that the permanent maintenance fund will earn sufficient income to provide for the care and maintenance of the cemetery; and

(11)(A) Purchase insolvent, licensed perpetual care cemeteries that have been in court-ordered receivership or conservatorship for at least five (5) years.

(B) If the taking of legal possession of the cemetery requires the payment of consideration, any payment made by the board shall not exceed one thousand dollars ($1,000).

History. Acts 1977, No. 352, § 5; 1981, No. 512, § 2; A.S.A. 1947, § 82-426.5; Acts 1997, No. 295, § 3; 2001, No. 1242, § 2; 2007, No. 430, § 2; Acts 2009, No. 714, § 2.

A.C.R.C. Notes. Acts 2007, No. 430, § 1, provided: "Legislative intent.

"(a) The General Assembly finds:

"(1) Certain cemeteries in the state have been declared insolvent, fallen into neglect, and placed in court-ordered receivership at the request of state regulators and will remain in that condition if a buyer cannot be found;

"(2) The State of Arkansas has an interest in the appearance and the viable operation of certain historically significant cemeteries in the state that are in receivership, as they are gathering points for persons interested in Arkansas history and a part of the cultural history of the state and the municipalities or counties where the cemeteries are located; and

"(3) The public would be better served in certain circumstances by taking a cemetery out of receivership and operating it as a public partnership between various governmental entities.

"(b) It is the intent of this act to authorize contracts with local governing bodies for maintenance and operation of certain cemeteries and to preserve existing cemetery records."

Amendments. The 2007 amendment added (11) and made related changes.

The 2009 amendment rewrote (10).

Effective Dates. Acts 2009, No. 714, § 4, provided: "This act takes effect January 10, 2010."

20-17-1007. Examination of cemetery.

(a)(1)(A) Each cemetery company examined in accordance with § 20-17-1006 shall pay to the Arkansas Cemetery Board a fee for each examination as the board shall prescribe by rule.

(B) In addition, the cemetery company shall pay to the board the amount of expenses and stipends paid by the board to any board member examining the physical condition or appearance of a cemetery when the examination is ordered by the board on its own motion or on request of an interested individual.

(2) However, all examinations shall be conducted by at least one (1) examiner or board member, and the examinations shall be conducted only pursuant to an order of the board.

(b)(1) In lieu of any financial examination which the board shall be authorized to make, the board may accept the audit of an independent certified public accountant, provided that the Securities Commissioner has notified the cemetery company that the audit would be accepted and that the cemetery company has notified the commissioner in writing that an audit would be prepared.

(2) The costs of the audit shall be borne by the cemetery company, and the scope of the audit shall be at least equal to the scope of the examination required by the board.

History. Acts 1977, No. 352, § 20; 1981, No. 512, § 5; A.S.A. 1947, § 82-426.20; Acts 1997, No. 250, § 191; 2009, No. 715, § 4.

Amendments. The 2009 amendment substituted "at least one (1) examiner" for "a single examiner" in (a)(2).

20-17-1009. Permit — Investigation by Department of Health.

(a) Upon submission of an application to the Arkansas Cemetery Board for the issuance of a permit for a new cemetery or for an extension of the boundaries of an existing cemetery, the applicant shall request that the Department of Health investigate the proposed cemetery location or extension to determine if the proposed new or expanded location will be sanitary.

(b) In making the investigation, the department shall take into consideration the proximity of the proposed cemetery or extension to human habitation, the nature of the soil, the drainage of the ground, the danger of pollution of springs or streams of water, and any other conditions concerning whether the proposed new or expanded location will be sanitary.

(c)(1) After completing the investigation, the department shall promptly submit in writing its approval or disapproval of the proposed new or expanded location from a sanitary standpoint to the board.

(2) If the department disapproves the proposed cemetery location or extension, further action on the application shall be suspended until the applicant acquires a location which meets with the approval of the department or until other action, as necessary, is taken.

(d) The cemetery shall pay the department any fee required by law.

History. Acts 1977, No. 352, § 9; A.S.A. 1947, § 82-426.9; Acts 2009, No. 715, § 5.

Amendments. The 2009 amendment rewrote (a); substituted "department" for "division" in (b), (c)(1), (c)(2), and (d); substituted "concerning whether the proposed new or expanded location will be sanitary" for "as would bear upon the situation" in (b); subdivided (c); and made minor stylistic changes.

20-17-1010. Permit — Investigation and issuance by the Arkansas Cemetery Board.

(a) If the cemetery company has fully complied with this subchapter and if the Department of Health approves the location of the new cemetery or the extension of the boundaries of an existing cemetery, then the application shall be submitted to the Arkansas Cemetery Board for investigation and for approval or disapproval.

(b) Immediately upon the submission of each application, the board shall make such investigation as shall enable it to determine the fitness of the cemetery company, the need for the cemetery, and all other questions bearing directly or indirectly upon the need or desirability from the public standpoint of the proposed cemetery or extension.

(c)(1) If the application for a new cemetery is approved, the board shall issue a permit to the applicant only after the applicant has filed proof with the board that an initial principal deposit of at least five thousand dollars ($5,000) has been made to the permanent maintenance fund. This initial five thousand dollars ($5,000) can be used to meet the liability due the permanent maintenance fund for the first paid-in-full burial space sales sold by the permit holder.

(2) The permit shall be filed in the court of the county in which the cemetery is located and with the department.

History. Acts 1977, No. 352, § 10; A.S.A. 1947, § 82-426.10; Acts 1997, No. 295, § 5; 2009, No. 715, § 6.

Amendments. The 2009 amendment substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (a).

20-17-1011. Permit — Amendment.

(a) Whenever it is proposed that any cemetery subject to this subchapter amend its present permit, whether for construction of a mausoleum, reduction of boundaries, reduction or increase in percentage of gross sales proceeds to be placed in the permanent maintenance fund, or other amendment, then the cemetery company shall file an application for amendment of the permit.

(b) The application shall be accompanied by:

(1) A fee of four hundred dollars ($400);

(2) A statement of each proposed amendment;

(3) Statements, documents, and other information necessary to provide justification for the amendment;

(4) If the amendment is for construction of a mausoleum or similar structure, the application shall also include:

(A) Plans and specifications of the structure;

(B) A report of the inspection of the plans by the Department of Health;

(C) A copy of the sales contracts and conveyance documents proposed to be used;

(D) A proposed contribution to the permanent maintenance fund;

(E) A statement of whether the amount of the sales force will be utilized and of how preconstruction sales and interments will be handled;

(F) The location of the proposed structure;

(G) The estimated completion date;

(H) Either of the following, when sales proceeds may be received by the cemetery company prior to completion of construction and payment in full of the structure:

(i) An executed escrow agreement approved by the Arkansas Cemetery Board with a federally insured financial institution or other financial institution approved by the board which provides among other things that one hundred percent (100%) of the sales proceeds collected prior to the completion and payment in full of the structure will be placed into escrow; or

(ii)*(a)* An executed copy of the construction agreement for the structure which sets forth the total construction cost and the date the construction will be completed with either an executed irrevocable letter of credit from a federally insured financial institution or other financial institution approved by the board equal to one hundred twenty-five percent (125%) of the total cost of the structure, a cash

bond posted with a federally insured financial institution or other financial institution approved by the board equal to one hundred thirty percent (130%) of the total cost of the structure, or a construction performance bond payable to the board in the amount equal to the total cost of the structure as set forth in the construction agreement.

(b) All letters of credit and bonds, and their issuers, shall be approved by the board. The letter of credit shall state that the funds provided shall be paid to the board for the purpose of completing the construction of the structure or paying in full the completed structure if not done prior to the completion date set forth in the construction agreement. The construction performance bond shall state that the insurer shall advance the funds necessary to complete the construction of the structure or pay for the completed structure, if not done prior to the date set forth in the construction agreement. The cash bond shall provide that the financial institution shall pay the cash proceeds of the bond upon order of the board. The letters of credit or construction bonds shall state that if the structure is not completed and paid for in full within the maximum time provided for construction under this section, such letters of credit and bonds shall be used to complete and pay for the structure;

(I) Certification of an estimated start date for construction to take place no later than thirty-six (36) months after the date of the permit and further certifying completion within five (5) years after the date of the permit unless extended for good cause by the board; and

(J) Other information necessary to show that construction will be done in a good and workmanlike manner and be fireproof; and

(5) Other information as the board may by rule or order require.

(c) Eight (8) complete copies of the application for the amendment of the permit shall be filed with the Securities Commissioner at least twenty (20) calendar days prior to the meeting at which the board will consider the application.

History. Acts 1977, No. 352, § 12; A.S.A. 1947, § 82-426.12; Acts 1997, No. 295, § 6; 2005, No. 2169, § 2; 2009, No. 715, §§ 7, 8.

Amendments. The 2009 amendment inserted "reduction of boundaries" in (a), and made a related change; and substituted "Department of Health" for "Division of Health of the Department of Health and Human Services" in (b)(4)(B)

20-17-1012. Permit — Transfer of ownership.

(a) As used in this section, "controlling interest" means the direct or indirect power to direct the management and policies of a perpetual care cemetery or cemetery company by contract or otherwise, other than as an officer or employee of the perpetual care cemetery or cemetery company.

(b)(1)(A) If a change is proposed in the controlling interest of a perpetual care cemetery or a cemetery company or an organization that, directly or indirectly owns a controlling interest in the perpetual care cemetery or cemetery company, the cemetery company that

holds the current permit and the individual or organization proposing to gain the controlling interest shall file an application for the issuance of a new permit with the Arkansas Cemetery Board.

(B) A controlling interest is presumed to exist if an individual or entity directly or indirectly:

(i) Owns or controls fifty-one percent (51%) or more of the aggregate number of the issued or outstanding ownership interest of a perpetual care cemetery or cemetery company; or

(ii) Holds proxies with the power to vote or voting rights to proxies representing fifty-one percent (51%) or more of the aggregate number of the issued or outstanding ownership interest of a perpetual care cemetery or cemetery company.

(2) The application shall be accompanied by:

(A) A fee of one thousand five hundred dollars ($1,500);

(B) A statement of changes, if any, in the survey and map of the cemetery;

(C) A set of rules and regulations for the use, care, management, and protection of the cemetery;

(D) The proposed method of continuing the permanent maintenance fund for the cemetery;

(E) A statement of the proposed transfer;

(F) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy that reflects that the current permit holder has good and merchantable title to the land covered by the permit;

(G) A notarized statement from the seller and purchaser disclosing any current or future lien or mortgage on the land covered by the permit;

(H) A notarized statement from each current or future lienholder or mortgage holder on the land covered by the permit that all paid-in-full burial spaces will be released from the lien or mortgage at least semiannually;

(I)(i) A current detailed accounting of all paid-in-full merchandise contracts or accounts of the permit holder for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser.

(ii) The accounting shall be on an individual contract or account basis and contain the name of the purchaser, the contract or account number, the date of the contract, the gross amount of the contract, a description of the merchandise purchased, the date the contract or account was paid in full, and the specific location where the merchandise is stored;

(J) A current notarized statement from the permit holder that the application contains a complete and accurate accounting of all of his or her outstanding accounts receivable, discounted notes, and paid-in-full merchandise accounts or contracts for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser;

(K) A current notarized statement from the purchaser or organization gaining a controlling interest that it will assume the responsibility and liability for the accounts, notes, and contracts of the permit holder contained in the accountings and schedules filed with the application;

(L) The financial statement of the purchaser required by rule of the board showing that the purchaser has a minimum net worth of twenty thousand dollars ($20,000);

(M) A copy of the sales contract, transaction documents, or conveyance documents; and

(N) Any additional information required by the board or the Securities Commissioner.

(3) The board may for good cause waive all or part of an application requirement if the purchaser of a perpetual care cemetery is a state, city, or municipal government or a nonprofit organization as defined by § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

(4) Each permit holder of an interest in the cemetery company is liable for any funds and transactions up to the date of the sale or transfer.

(c)(1) Before the sale or transfer, the permit holder shall notify the board of the proposed sale or transfer and shall submit to the board, under oath, any document or record the board may require in order to demonstrate that the permit holder is not indebted to the permanent maintenance fund.

(2) After the transfer of ownership or a controlling interest, the permit holder shall present to the board proof that payments into the permanent maintenance fund are current.

(3) The board may require proof of the status of the permanent maintenance fund by the purchaser for a reasonable period of time as necessary in the public interest.

(4) The board may recover from the permit holder or purchaser for the benefit of the permanent maintenance fund:

(A) All sums that the permit holder or purchaser has not properly accounted for and paid into the trust fund; and

(B) Reasonable expenses incurred by the board if suit is filed or other collection action is taken.

(d) A cemetery company that has been issued a permit to operate a cemetery under this subchapter remains liable for the care and maintenance of the cemetery and all amounts owed to the permanent maintenance fund until a new permit is issued to the purchaser.

(e) A new permit shall not be issued to the purchaser of any cemetery until the purchaser complies with this subchapter and the board orders a new permit to be issued to the purchaser.

(f) A permit holder or purchaser that violates this section is guilty of a violation and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for the violation.

History. Acts 1977, No. 352, §§ 11, 21; A.S.A. 1947, §§ 82-426.11, 82-426.21; Acts 1997, No. 295, § 7; 2001, No. 1242, § 3; 2001, No. 1553, § 32; 2005, No. 1994, § 113; 2005, No. 2169, § 3; 2009, No. 429, § 1; 2011, No. 590, § 3.

A.C.R.C. Notes. Prior to the 1997 amendment, this section contained a subdivision (a)(2)(D), which read, "The proposed method of continuing the permanent maintenance fund presently in existence." The 1997 amendment neither set out (a)(2)(D) nor specifically deleted it.

Amendments. The 2009 amendment inserted (a)(3).

The 2011 amendment rewrote the section.

20-17-1013. Permanent maintenance fund generally.

(a)(1) The permanent maintenance fund is declared to be a trust fund for the purpose of administration, care, and maintenance of the cemetery, including lots, graves, spaces, crypts, niches, burial rights, or otherwise.

(2) The net income from the fund shall be paid to and be exclusively used and expended by the owners, managers, or officers and directors of the cemetery company for the care and maintenance of the cemetery and for no other purpose.

(3) The principal of the fund shall be invested and remain invested in such securities and funds as are permitted by the laws of Arkansas for the investment of policy reserves of life insurance companies as set forth in § 23-60-101 et seq. and in the common trust funds of state or national banks.

(4) However, any permanent maintenance fund having assets of more than two hundred fifty thousand dollars ($250,000) may invest not more than fifty percent (50%) of its assets in nonassessable common stocks which are listed on a national securities exchange, preferred stocks meeting the requirements of § 23-63-815, and investment trust securities meeting the requirements of § 23-63-820, and the diversification restrictions of § 23-63-805 shall not apply to investments in investment trust securities.

(5) In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence exercise in management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital.

(b) The permanent maintenance fund is authorized by this subchapter, and all sums paid into it or contributed to it shall be deemed to be for charitable and eleemosynary purposes.

(c) No rule against perpetuities shall be applicable to funds as mentioned in this section.

(d)(1) The trust fund shall be established by executing a written trust agreement approved by the Arkansas Cemetery Board.

(2)(A) The agreement may provide that the cemetery company may change the trustee of its trust fund by amending the agreement if:

(i) The successor trustee meets the requirements of § 20-17-1014; and

(ii) The trustee and successor trustee are parties to the amendment of the agreement.

(B) The trustee and successor trustee shall send the board notification of a change in trustee under subdivision (d)(2)(A) of this section within ten (10) calendar days after the change.

(e) At a minimum, the trustee shall maintain the following:

(1) A general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the trust fund;

(2) Documents supporting and verifying each asset of the trust fund; and

(3) A trust agreement.

(f) In establishing a permanent maintenance fund, the cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

History. Acts 1977, No. 352, §§ 13, 14; A.S.A. 1947, §§ 82-426.13, 82-426.14; Acts 2007, No. 240, § 3; 2011, No. 590, § 4.

Amendments. The 2007 amendment, in (c), substituted "No rule against perpetuities shall be" for "The rule against perpetuities shall not be"; and subdivided (d) into (1) and (2).

The 2011 amendment rewrote (d)(2).

20-17-1014. Permanent Maintenance Fund Trustees.

(a) The net income from the permanent maintenance fund shall only be used for general maintenance, administration, and preservation of the perpetual care cemetery.

(b) A cemetery company shall establish a permanent maintenance fund with or transfer the permanent maintenance fund to:

(1) A state or national bank or federal savings bank with trust powers;

(2) Three (3) trustees, if:

(A) All trustees that make disbursements from the trust fund deposit with the Arkansas Cemetery Board a fidelity bond with corporate surety payable to the trust fund in a penal sum not less than one hundred percent (100%) of the value of the trust fund principal at the beginning of each calendar year; and

(B) No more than one (1) of the trustees has a direct or indirect financial interest in the perpetual care cemetery; or

(3) An individual trustee that on behalf of the cemetery company deposits all permanent maintenance funds directly into a savings account or certificate of deposit in a state or national bank or savings and loan association in this state not less than forty-five (45) days after collection if:

(A) The funds deposited are federally insured;

(B) The funds are restricted to prevent the principal amount of the funds from being withdrawn without the written approval of and on a form approved by the Securities Commissioner; and

(C) Not less than one (1) time per year the net income from the funds may be withdrawn by the individual trustee on behalf of the cemetery company for purposes permitted by this subchapter.

History. Acts 1977, No. 352, § 13; A.S.A. 1947, § 82-426.13; Acts 2011, No. 590, § 5; 2011, No. 1148, § 1.

Amendments. The 2011 amendment by No. 590 rewrote the section

The 2011 amendment by No. 1148 inserted "or federal savings bank" in (b)(1).

20-17-1015. Permanent maintenance fund — Annual report.

(a)(1) Within seventy-five (75) days after the end of each calendar year, the Arkansas Cemetery Board shall require the trustee of the permanent maintenance fund to file under oath a detailed annual report of the condition of the fund.

(2) The annual report shall include:

(A) A description of the assets of the fund;

(B) A description of cemetery property encumbered by a lien and the amount of the lien;

(C) The cost of acquiring each asset;

(D) The market value of the asset at the time of its acquisition, its current market value, and the status of any default;

(E) A statement that:

(i) The fund is not encumbered by debt; and

(ii) None of the assets of the fund constitute loans to:

(a) The cemetery company for which the trust fund is established; or

(b) An officer or director of the cemetery company; and

(F) Any other information the trustee or the board deems pertinent.

(b) The report shall show the amounts of principal and undistributed income of the fund at the beginning of the period, the amounts deposited by the cemetery company into the fund during the period, the income earned and disbursements made during the period, the details of any investment or reinvestment during the period, and the balances of principal and income at the end of the period being reported on.

(c)(1) If the trustee of the fund fails to meet the requirements of this section, then it shall be the duty of the board to apply to the Pulaski County Circuit Court for an order to require the trustee of the fund to file a proper report and to make any additional contributions due to the failure to timely file the annual report.

(2) If funds have been misappropriated by the trustee or are not being handled as required by law, then the board shall apply to the circuit court in the county in which the cemetery is located to have a receiver or conservator appointed by the court to take custody of the trust funds for the benefit of the cestui que trust. The receiver or conservator is vested with full power to file such suits against the defaulting trustee as may be necessary to require a full accounting and restoration of the trust funds and to turn the residue over to another

trustee as the cemetery shall select, in conformity with this subchapter, as the new trustee of the permanent maintenance fund.

(3) Failure by the trustee to make a timely filing of the annual report required by subsection (a) of this section shall be grounds for the trustee to pay an additional contribution to the permanent maintenance fund of fifty dollars ($50.00) per day until the report is filed with the board.

History. Acts 1977, No. 352, § 16; 1981, No. 512, § 4; A.S.A. 1947, § 82-426.16; Acts 1997, No. 295, § 8; 2011, No. 590, § 6.

Amendments. The 2011 amendment rewrote (a).

20-17-1016. Permanent maintenance fund — Required deposits.

(a) Unless a greater amount is established by rule of the Arkansas Cemetery Board under § 20-17-1006(10), a cemetery company shall deposit into its permanent maintenance fund a sum not less than:

(1) Twenty percent (20%) of the gross proceeds from the sale of a lot or grave space in its cemetery; and

(2) Five percent (5%) of the gross proceeds from the sale of a mausoleum crypt, lawn crypt, niche, or other similar entombment in its cemetery.

(b)(1) The deposit shall be made by the cemetery company not later than forty-five (45) days after the final payment has been made.

(2) However, any cemetery company making sales on installment sales contracts shall deposit the required percentage in accordance with the following:

(A) If the cemetery company receives installment payments directly and if adequate records are maintained as to the full amount of sale, the receipts received, and the balance due, then the cemetery company shall deposit the required percentage of gross proceeds of sale into the permanent maintenance fund not later than the forty-fifth day after the final payment is made, or the cemetery company may deposit the required percentage of each amount received not later than the forty-fifth day after each installment payment by the purchaser; and

(B)(i) If the cemetery company elects to discount the installment sales contracts at a bank or other financial institution and receive a discounted value immediately in cash, the required percentage of the gross sales price shall be placed in a separate restricted escrow account at the time that the contract is discounted.

(ii) The amount so placed in escrow shall not be withdrawn until the lot purchaser defaults on or fully satisfies his or her contract obligations.

(iii) This restricted escrow account may be used by the bank or other financial institution as a part of its required reserve and may be used as recourse if the lot purchaser defaults on the contract.

(iv) Upon default, the required percentage of the gross sales price which was placed in this escrow account may be withdrawn and used by the cemetery company.

(v) Once final payment has been made, the required percentage of the gross sales price that was placed in an escrow account shall be withdrawn and placed into the permanent maintenance fund within five (5) business days.

(vi) If the cemetery corporation enters into an agreement with the bank or other financial institution, which in the Securities Commissioner's determination adequately provides for the safeguards set forth in subdivision (b)(2)(A) of this section, then that subdivision shall not be applicable to the cemetery corporation.

(3) If a cemetery company gives away a grave space or sells a grave space for a price less than the current market price, the gross sales proceeds received for a similar grave space in the immediately adjacent or similar location in the cemetery in a recent arms-length transaction shall be used as the basis to make the required permanent maintenance fund contribution for the gift or reduced price sale.

(c)(1) If the cemetery company fails to make the required deposits in accordance with this section or if the moneys placed in escrow are not deposited as required by this subchapter, then the cemetery company shall be liable for and the board may collect as an additional contribution to the permanent maintenance fund ten dollars ($10.00) per day but in no instance in amounts to exceed five thousand dollars ($5,000) or the actual cost of the contract property or cemetery lots, whichever is greater, for the period of the failure.

(2) Upon the refusal of the cemetery company to pay the board the penalty, the board may institute suit to recover the contribution and costs and such other relief as the state in its judgment deems proper and necessary.

History. Acts 1977, No. 352, § 13; 1981, No. 512, § 3; A.S.A. 1947, § 82-426.13; Acts 1997, No. 295, § 9; 2009, No. 714, § 3; 2011, No. 590, § 7.

Amendments. The 2009 amendment rewrote (a).

The 2011 amendment, in (b)(2)(B)(v), deleted "immediately" following "withdrawn and placed" and added "within five (5) business days."

Effective Dates. Acts 2009, No. 714, § 4, provided: "This act takes effect January 10, 2010."

20-17-1018. Violations, criminal penalties, and remedies.

(a) In addition to the civil provisions of this subchapter, it shall be unlawful for any person to:

(1) Advertise or operate all or part of a cemetery as a perpetual care cemetery or permanent maintenance cemetery without holding a valid permit issued by the Arkansas Cemetery Board; or

(2) Fail to place the required contributions into the permanent maintenance fund or to remove any principal of the permanent maintenance fund from trust.

(b) Any person who knowingly violates subsection (a) of this section shall be guilty of a felony and upon pleading guilty or nolo contendere to or being found guilty of a violation of subsection (a) of this section

shall be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment in the state penitentiary for not more than six (6) years, or by both fine and imprisonment.

(c)(1)(A) If it appears to the board that a person has engaged in or is about to engage in a violation of subdivision (a)(1) of this section, the board may summarily order the person to cease and desist from the act or practice.

(B) Upon the entry of the order under subdivision (c)(1)(A) of this section, the board shall promptly notify the person that the order has been entered and state the reasons for the order.

(2)(A) The person ordered to cease and desist may contest the cease and desist order by delivering a written request for a hearing to the board within thirty (30) days from the date that notice of the order is sent by the board to the last known address of the person by first class mail, postage prepaid.

(B) The board shall schedule a hearing to be held within a reasonable amount of time after the Securities Commissioner receives a timely written request for hearing.

(C) If no hearing is requested and none is ordered by the board, the order will remain in effect until it is modified or vacated by the board.

(D) After notice and an opportunity for a hearing, the board may:

(i) Affirm, modify, or vacate the cease and desist order under subdivision (c)(1)(A) of this section; and

(ii) For a violation of this subchapter, by order levy a fine not to exceed:

(a) Ten thousand dollars ($10,000) for each violation; or

(b) An amount equal to the total amount of money received in connection with each violation.

(3) The board may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates subdivision (a)(1) of this section and to enforce compliance with this chapter:

(A) After an order is issued under subdivision (c)(1) or (c)(2) of this section; or

(B) Without issuing an order under subdivision (c)(1) or (c)(2) of this section.

(4) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

(5) The board is not required to post a bond to obtain the relief provided by this section.

History. Acts 1977, No. 352, § 21; A.S.A. 1947, § 82-426.21; Acts 1997, No. 295, § 10; 2011, No. 590, § 8.

Amendments. The 2011 amendment inserted the second occurrence of "cemetery" in (a)(1); in (b), substituted "knowingly violates" for "is in willful violation of," "pleading guilty or nolo contendere to or being found guilty of a violation of subsection (a) of this section" for "conviction," and "ten thousand dollars ($10,000)" for "six thousand dollars ($6,000)"; and added (c).

20-17-1019. Conveyance of lots.

(a)(1) An instrument conveying all or part of a burial lot or burial plot shall be issued to the purchaser upon full payment of the purchase price of the burial lot or burial plot.

(2) The cemetery company shall not use an instrument to convey a burial lot or burial plot unless the form of the instrument has been provided to the Arkansas Cemetery Board.

(b) Only the cemetery company or its agents may sell or convey all or part of lots, grave spaces, crypts, or niches except that:

(1) The owner of all or part of a lot, grave space, niche, or crypt may sell his or her interest in a lot, grave space, crypt, or niche if:

(A) The lot, grave space, crypt, or niche is first offered in writing to the cemetery company at the purchase price then being charged by the cemetery company for similar lots; and

(B) The cemetery company refuses the offer within thirty (30) days after the offer is made; and

(2) An owner may convey or devise to the cemetery company his or her interest in a lot, grave space, niche, or crypt.

(c) The secretary or other responsible officer of the cemetery company shall file and record in its books all instruments of transfer.

(d) The instrument of conveyance shall be signed by the persons having proper authority.

(e) A mortgage or lien on cemetery land granted by a permit holder shall not encumber any burial space that has been sold before granting the mortgage or lien.

(f)(1) To ensure that all burial spaces remain unencumbered, the permit holder shall file with the board before executing a mortgage or creating a lien a notarized statement reflecting the specific description of the land to be affected by the mortgage or lien and a waiver or release by the proposed mortgagee or lienholder of any claim or right to any burial space for which an instrument of conveyance or deed has been or may be executed.

(2) The failure of a permit holder to comply with the requirements of this subsection is grounds for the board to require an additional contribution to the permanent maintenance fund of the cemetery in an amount not exceeding one thousand dollars ($1,000) for each burial space encumbered.

History. Acts 1977, No. 352, § 18; A.S.A. 1947, § 82-426.18; Acts 2001, No. 1242, § 4; 2011, No. 590, § 9.

Amendments. The 2011 amendment rewrote the section.

20-17-1021. Disposition of contributions and fees.

(a) All contributions imposed under this subchapter shall be:

(1) Deposited into the respective permanent maintenance fund of the cemetery company upon which the contribution is imposed; and

(2) Paid within forty-five (45) days of imposition.

(b) All fees imposed under this subchapter shall be paid to the Arkansas Cemetery Board.

History. Acts 1977, No. 352, § 23; A.S.A. 1947, § 82-426.23; Acts 2009, No. 715, § 9.

Amendments. The 2009 amendment, in (a), inserted (a)(2), redesignated the remaining text accordingly, and made related and minor stylistic changes.

20-17-1022. Records required.

(a) All cemetery companies shall make and keep accounts and records which shall indicate that they have made the required contributions to the permanent maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(b) Unless otherwise approved by the Arkansas Cemetery Board, all sales contracts and deeds issued by the cemetery company shall be numbered prior to when they are executed by the cemetery company and shall contain those items that the board by rule or order prescribes.

(c) A cemetery company shall maintain records of its interments that shall include without limitation:

(1) The name of the interred or entombed;

(2) The date of interment or entombment; and

(3) The location of interment or entombment.

History. Acts 1977, No. 352, § 17; A.S.A. 1947, § 82-426.17; Acts 2011, No. 590, § 10.

Amendments. The 2011 amendment added (c).

20-17-1023. Annual report of condition of cemetery company.

(a)(1) Within seventy-five (75) days after the end of the calendar year, a cemetery company shall file with the Arkansas Cemetery Board a report under oath of its condition.

(2) The report shall include without limitation:

(A) The name and contact information of:

(i) The cemetery company;

(ii) The person in charge of the records of the cemetery company; and

(iii) Each person with authority to sign conveyance documents;

(B) The amount of sales and date of final payment of cemetery lots, graves, spaces, mausoleums, columbaria, crypts, lawn crypts, or niches for which payment has been made in full and instruments of conveyance have been issued during the preceding calendar year;

(C) The amounts paid into the permanent maintenance fund;

(D) The income received from the fund during the preceding calendar year;

(E) The total amount owed to the fund;

(F) The amounts owed to the fund at the date of the report;

(G) The amount expended for care and maintenance of the cemetery;

(H) The names and addresses of the owners of the cemetery company or the officers and directors of the company and stating any change of control that has occurred during the past calendar year, the date of incorporation, and the resident agent and resident agent's office if the cemetery company is a corporation; and

(I) Any other information the board requires.

(b) The report shall be accompanied by:

(1) A filing fee of three hundred twenty-five dollars ($325); and

(2)(A) A fee of seven dollars ($7.00) for each burial sale contract entered into during the preceding calendar year by the cemetery company regardless of the number of spaces sold under the contract regarding lots, grave spaces, mausoleums, columbaria, crypts, lawn crypts, and niches.

(B) The burial sale contract fee under subdivision (b)(2)(A) of this section is not required for a burial sale contract of an interment in an infant interment garden that complies with § 20-17-1030.

(c)(1) Failure by the cemetery company to make a timely filing of its annual report shall be grounds for an additional contribution to the permanent maintenance fund of fifty dollars ($50.00) per day until the report is filed with the board.

(2) If the cemetery company refuses to pay the contribution or fees, the board shall institute suit to recover the penalty and fee and costs and such other relief as the state in its judgment deems proper.

(3) If the cemetery company shall fail to meet the requirements of this section, then the board shall apply to the Pulaski County Circuit Court for the proper order to require a report.

(d) The beginning and ending dates of the report shall coincide with the dates of the report of the trustee required in § 20-17-1015.

(e) Upon receipt of a properly completed annual report from the trustee and the cemetery company, the board shall issue to the cemetery company an annual operating permit which shall be prominently displayed at the main entrance to the cemetery.

History. Acts 1977, No. 352, § 19; A.S.A. 1947, § 82-426.19; Acts 2005, No. 2169, § 4; 2011, No. 590, §§ 11, 12.

Amendments. The 2011 amendment rewrote (a) and (b)(2).

20-17-1024. [Repealed.]

Publisher's Notes. This section, concerning preexisting cemeteries, was repealed by Acts 2009, No. 715, § 10. The section was derived from Acts 1977, No. 352, § 22; A.S.A. 1947, § 82-426.22.

20-17-1025. Protection of cemeteries — Power to lend.

(a) On August 1, 2001, the Arkansas Cemetery Board shall segregate one hundred eighty thousand dollars ($180,000) within its general operating fund to be known as the insolvent cemetery loan fund administered by the Securities Commissioner and only used to lend a court-appointed receiver or conservator the funds necessary to assure

that a cemetery will be properly maintained and will continue to be a going concern, including the funds necessary to pay a reasonable surety bond premium that is required to be posted by the court.

(b) The board may take any legal action necessary against a cemetery company, receiver, or conservator to recover funds loaned by the board to or for the benefit of the cemetery, the cemetery company, receiver, or conservator for the payment of maintenance expenses or unpaid loans.

(c) Disbursement from the insolvent cemetery loan fund for loans to a receiver or conservator shall be made on a "first in, first out" basis as determined by the commissioner.

(d) The commissioner may accept donations to the board from any cemetery company, organization, or individual to fund loans under this section.

(e) The board may waive payment or extend the payment period for a loan made to a receiver or conservator if the board determines that it is unlikely that the receiver or conservator has or will receive sufficient funds to repay the loan and that the funds were or are needed to maintain and operate the cemetery for the benefit of the lot owners and the general public.

(f) Any funds that accumulate in the insolvent cemetery loan fund in excess of one hundred eighty thousand dollars ($180,000) may at the request of the board be transferred to the insolvent cemetery grant fund under § 20-17-1301 et seq.

History. Acts 1997, No. 295, § 11; 2001, No. 1242, § 5; 2009, No. 429, § 2.

Amendments. The 2009 amendment inserted "known as the insolvent cemetery loan fund" in (a); substituted "the insolvent cemetery loan fund" for "such funds" in (c); rewrote (d), which read: "Donations to the board to fund such loans may be accepted by the commissioner from any cemetery company, organization, or individual"; added (f); and made minor stylistic changes.

20-17-1027. Duties of State Securities Department.

(a) The State Securities Department shall assist the Arkansas Cemetery Board in the performance of its duties.

(b) Assistance under subsection (a) of this section shall include, but is not limited to:

(1) Receiving and disseminating filings, questions, and requests on behalf of the board to the members of the board in advance of each meeting;

(2) Reviewing all filings, questions, and requests on behalf of the board and offering its opinion on the resolution of the matter;

(3) Issuing written responses regarding complaints received by the board;

(4) Scheduling all meetings in conjunction with the Chair of the Arkansas Cemetery Board;

(5) Providing appropriate legal notices for all scheduled meetings;

(6) Establishing a site where meetings of the board may be held;

(7) Scheduling the services of a court reporter for all meetings of the board;

(8) Providing legal representation and assistance through the legal staff of the department to the board in matters pertaining to this subchapter;

(9) Acting as a liaison between the board and any court involved in the administration of any perpetual care cemetery placed in receivership;

(10) Performing inspections at cemeteries for which complaints have been received by the board;

(11) Performing special audits as necessary;

(12) Scheduling regular audits of perpetual care cemeteries;

(13) Administering the annual perpetual care reporting for all perpetual care cemeteries; and

(14) Assisting in the formulation of legislation on behalf of the board.

History. Acts 2005, No. 2169, § 6; 2009, No. 715, § 11.

Amendments. The 2009 amendment deleted "cemetery industry and the" following "on behalf of" in (b)(14).

20-17-1028. Contracts with municipality or county where a cemetery is located.

(a)(1) The Arkansas Cemetery Board may contract with the municipality or county where a cemetery is located for the care and maintenance and the operation of the cemetery.

(2) Services relating to the care and maintenance and the operation of the cemetery include without limitation:

(A) The sale and conveyance of lots;

(B) The opening and closing of graves;

(C) The preparation of financial reports and legal documents;

(D) The maintenance of driveways;

(E) The removal of trash and debris;

(F) The cutting of grass;

(G) The planting and care of trees, shrubs, and flowers; and

(H) The necessary improvements to streets, avenues, walks, or other public grounds of the cemetery.

(3) The municipal or county government may subcontract with qualified persons to provide services under this section.

(b)(1) If the board contracts with a municipality or county under this section, the municipality or county, in addition to complying with any applicable statute, shall file with the board in March of each year a financial report showing all moneys received and expended during the preceding year, including without limitation:

(A) The date of receipt of all moneys;

(B) The source from which the moneys were received;

(C) All moneys paid out;

(D) The date the moneys were paid out;

(E) The person to whom the moneys were paid out; and

(F) The purpose of the payment.

(2) At the end of each calendar year, the municipality or county shall review the fiscal position of the cemetery and direct any excess moneys to the permanent maintenance fund.

(c) For the purposes of this section, a municipality or county may accept funds from public and private entities and direct the funds to:

(1) General maintenance and improvement; or

(2) The permanent maintenance fund.

(d) The state, a city, or a county shall be immune from liability in contract or in tort for actions taken to implement this section.

History. Acts 2007, No. 430, § 3.

A.C.R.C. Notes. Acts 2007, No. 430, § 1, provided:

"Legislative intent.

"(a) The General Assembly finds:

"(1) Certain cemeteries in the state have been declared insolvent, fallen into neglect, and placed in court-ordered receivership at the request of state regulators and will remain in that condition if a buyer cannot be found;

"(2) The State of Arkansas has an interest in the appearance and the viable operation of certain historically significant cemeteries in the state that are in receivership, as they are gathering points for persons interested in Arkansas history and a part of the cultural history of the state and the municipalities or counties where the cemeteries are located; and

"(3) The public would be better served in certain circumstances by taking a cemetery out of receivership and operating it as a public partnership between various governmental entities.

"(b) It is the intent of this act to authorize contracts with local governing bodies for maintenance and operation of certain cemeteries and to preserve existing cemetery records."

20-17-1029. Cemetery advisory boards — Membership — Organization — Authority.

(a) The Governor may create a cemetery advisory board for any cemetery purchased under § 20-17-1006 to assist the state and the municipality or county where the cemetery is located in achieving the efficient management, operation, maintenance, and preservation of the cemetery.

(b)(1) A cemetery advisory board shall be composed of seven (7) members appointed by the Governor as follows:

(A) Three (3) members shall be owners of lots in the cemetery or have demonstrated an interest in the preservation of the cemetery;

(B) Three (3) members shall be owners or operators of a licensed cemetery or funeral home in this state; and

(C) One (1) member shall be a person actively engaged, by profession or as a volunteer, in activities promoting the historic preservation of cemeteries in the local community.

(2)(A) The terms of the members shall be for three (3) years.

(B) Members shall serve until their successors are appointed and qualified.

(C) The initial members shall draw lots so that three (3) members serve a term of one (1) year, two (2) members serve a term of two (2) years, and two (2) members serve a term of three (3) years.

(D)(i) Vacancies for any unexpired term of a member shall be filled in the same manner as the original appointment of the vacating member.

(ii) An appointee to fill a vacancy shall serve for the unexpired term and is eligible for reappointment.

(3) Members shall biennially elect a chair, a vice chair, and a secretary from the membership, whose duties shall be those customarily exercised by the officers or specifically designated by the cemetery advisory board.

(4) No member shall be liable for any damages unless it is made to appear that he or she has acted with corrupt and malicious intent.

(5) Members shall serve without compensation.

(6) A cemetery advisory board shall meet as often as it deems necessary for the purpose of carrying out its duties under this section.

(c) A cemetery advisory board may:

(1) Establish itself as a section 501(c)(3) corporation under the Internal Revenue Code of 1986, as it existed on January 1, 2007;

(2) Raise private funds for the benefit of the cemetery general fund and the permanent maintenance fund;

(3) Recruit volunteers; and

(4)(A) Advise the Arkansas Cemetery Board and the municipality or county where the cemetery is located concerning long-term goals and plans for efficient cemetery operation and beautification.

(B) No policy of a cemetery advisory board relating to long-term goals and plans for efficient cemetery operation and beautification shall be adopted unless the municipality or county where the cemetery is located approves the policy.

History. Acts 2007, No. 430, § 3; 2009, No. 952, § 5.

A.C.R.C. Notes. Acts 2007, No. 430, § 1, provided:

"Legislative intent.

"(a) The General Assembly finds:

"(1) Certain cemeteries in the state have been declared insolvent, fallen into neglect, and placed in court-ordered receivership at the request of state regulators and will remain in that condition if a buyer cannot be found;

"(2) The State of Arkansas has an interest in the appearance and the viable operation of certain historically significant cemeteries in the state that are in receivership, as they are gathering points for persons interested in Arkansas history and a part of the cultural history of the state and the municipalities or counties where the cemeteries are located; and

"(3) The public would be better served in certain circumstances by taking a cemetery out of receivership and operating it as a public partnership between various governmental entities.

"(b) It is the intent of this act to authorize contracts with local governing bodies for maintenance and operation of certain cemeteries and to preserve existing cemetery records."

Amendments. The 2009 amendment substituted "biennially" for "biannually" in (b)(3).

20-17-1030. Infant interment gardens.

(a) A cemetery company may maintain an infant interment garden if:

(1) The cemetery company provides the Arkansas Cemetery Board a letter of intent to establish an infant interment garden and a map of the location for the infant interment garden;

(2) The infant interment garden is made available to the public and to existing families and property owners of the permitted cemetery on a non-discriminatory basis;

(3) No charge is made to the family, next of kin, or any agency for the space, interment, and opening and closing services;

(4) The infant interment garden complies with the rules and regulations of the cemetery on file with the board; and

(5) The conveyance and recordkeeping requirements of § 20-17-1019 and § 20-17-1022 are satisfied for each interment in the infant interment garden.

(b) An infant interment garden that complies with this section is not subject to the deposit requirements of § 20-17-1016.

History. Acts 2011, No. 590, § 13.

Subchapter 12 — Revised Arkansas Anatomical Gift Act

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20-17-1227. [Reserved.]

Effective Dates. Acts 2007, No. 839, § 10: Apr. 3, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the donation of parts of human bodies provides a significant source for protecting the health and safety of the citizens of Arkansas; and that continuous advances in the technology of human transplants and the inherent limitations incident to transplantation from dead bodies require that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-17-1201. Short title.

This subchapter shall be known and may be cited as the "Revised Arkansas Anatomical Gift Act".

History. Acts 2007, No. 839, § 1.

20-17-1202. Definitions.

In this subchapter:

(1) "Adult" means an individual who is at least eighteen (18) years of age.

(2) "Agent" means an individual:

(A) authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or

(B) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this subchapter, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under § 20-17-1211.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) "Driver's license" means a license or permit issued by the Office of Driver Services to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(13) "Identification card" means an identification card issued by the Office of Driver Services.

(14) "Know" means to have actual knowledge.

(15) "Minor" means an individual who is under eighteen (18) years of age.

(16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) "Parent" means a parent whose parental rights have not been terminated.

(18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(22) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(25) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Refusal" means a record created under § 20-17-1207 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) "Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

History. Acts 2007, No. 839, § 1.

20-17-1203. Applicability.

This subchapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

History. Acts 2007, No. 839, § 1.

20-17-1204. Who may make anatomical gift before donor's death.

Subject to § 20-17-1208, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in § 20-17-1205 by:

(1) the donor, if the donor is an adult or if the donor is a minor and is:

(A) emancipated; or

(B) authorized under state law to apply for a driver's license because the donor is at least sixteen (16) years of age;

(2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is an unemancipated minor; or

(4) the donor's guardian.

History. Acts 2007, No. 839, § 1.

20-17-1205. Manner of making anatomical gift before donor's death.

(a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in subsection (b).

(b) A donor or other person authorized to make an anatomical gift under § 20-17-1204 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in paragraph (1).

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

History. Acts 2007, No. 839, § 1.

20-17-1206. Amending or revoking anatomical gift before donor's death.

(a) Subject to § 20-17-1208, a donor or other person authorized to make an anatomical gift under § 20-17-1204 may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subsection (a)(1)(C) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in paragraph (1).

(c) Subject to § 20-17-1208, a donor or other person authorized to make an anatomical gift under § 20-17-1204 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a).

History. Acts 2007, No. 839, § 1.

20-17-1207. Refusal to make anatomical gift — Effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subsection (a)(1)(B) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) state that it has been signed and witnessed as provided in paragraph (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in subsection (a) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to § 20-17-1205 that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in § 20-17-1208(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

History. Acts 2007, No. 839, § 1.

20-17-1208. Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) and subject to subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under § 20-17-1205 or an amendment to an anatomical gift of the donor's body or part under § 20-17-1206.

(b) A donor's revocation of an anatomical gift of the donor's body or part under § 20-17-1206 is not a refusal and does not bar another person specified in § 20-17-1204 or § 20-17-1209 from making an anatomical gift of the donor's body or part under § 20-17-1205 or § 20-17-1210.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under § 20-17-1205 or an amendment to an anatomical gift of the donor's body or part under § 20-17-1206, another person may not make, amend, or revoke the gift of the donor's body or part under § 20-17-1210.

(d) A revocation of an anatomical gift of a donor's body or part under § 20-17-1206 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under § 20-17-1205 or § 20-17-1210.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under § 20-17-1204, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under § 20-17-1204, an anatomical gift of a part for one or more of the purposes set forth in § 20-17-1204 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under § 20-17-1205 or § 20-17-1210.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

History. Acts 2007, No. 839, § 1.

20-17-1209. Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) and unless barred by § 20-17-1207 or § 20-17-1208, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under § 20-17-1204(2) immediately before the decedent's death;

(2) the spouse of the decedent;

(3) adult children of the decedent;

(4) parents of the decedent;

(5) adult siblings of the decedent;

(6) adult grandchildren of the decedent;

(7) grandparents of the decedent;

(8) an adult who exhibited special care and concern for the decedent;

(9) the persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under § 20-17-1211 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

History. Acts 2007, No. 839, § 1.

20-17-1210. Manner of making, amending, or revoking anatomical gift of decedent's body or part.

(a) A person authorized to make an anatomical gift under § 20-17-1209 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c), an anatomical gift by a person authorized under § 20-17-1209 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under § 20-17-1209 may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

History. Acts 2007, No. 839, § 1.

20-17-1211. Persons that may receive anatomical gift — Purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) subject to subsection (b), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) an eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) cannot be transplanted into the individual, the part passes in accordance with subsection (g) in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purpose of subsection (c), if there is more than one purpose of an anatomical gift set forth in the document of gift but the

purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g).

(g) For purposes of subsections (b), (e), and (f) the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under § 20-17-1205 or § 20-17-1210 or if the person knows that the decedent made a refusal under § 20-17-1207 that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a)(2), nothing in this subchapter affects the allocation of organs for transplantation or therapy.

History. Acts 2007, No. 839, § 1.

20-17-1212. Search and notification.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) a law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) if no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

History. Acts 2007, No. 839, § 1.

20-17-1213. Delivery of document of gift not required — Right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under § 20-17-1211.

History. Acts 2007, No. 839, § 1.

20-17-1214. Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Office of Driver Services and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Office of Driver Services to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this subchapter, at any time after a donor's death, the person to which a part passes under § 20-17-1211 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this subchapter, an examination under subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a), a procurement organization shall make a reasonable search for any person listed in § 20-17-1209 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to § 20-17-1211(i) and § 20-17-1223, the rights of the person to which a part passes under § 20-17-1211 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this subchapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under § 20-17-1211, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

History. Acts 2007, No. 839, § 1.

20-17-1215. Coordination of procurement and use.

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

History. Acts 2007, No. 839, § 1.

20-17-1216. Sale or purchase of parts prohibited.

(a) Except as otherwise provided in subsection (b), a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits an unclassified felony and upon conviction is subject to a fine not exceeding fifty thousand dollars ($50,000) or imprisonment not exceeding five (5) years, or both.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

History. Acts 2007, No. 839, § 1.

20-17-1217. Other prohibited acts.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits an unclassified felony and upon conviction is subject to a fine not exceeding fifty thousand dollars ($50,000) or imprisonment not exceeding five (5) years, or both.

History. Acts 2007, No. 839, § 1.

20-17-1218. Immunity.

(a) A person that acts in accordance with this subchapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this subchapter, a person may rely upon representations of an individual listed in § 20-17-1209(a)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

History. Acts 2007, No. 839, § 1.

20-17-1219. Law governing validity — Choice of law as to execution of document of gift — Presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) this subchapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

History. Acts 2007, No. 839, § 1.

20-17-1220. [Reserved.]

20-17-1221. Effect of anatomical gift on advance health-care directive.

(a) In this section:

(1) "Advance health-care directive" means a power of attorney for health care or a record signed by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health-care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health-care directive, measures necessary to ensure the medical suitability of an organ for transplantation or therapy may not be withheld or withdrawn from the prospective donor, unless the declaration expressly provides to the contrary.

History. Acts 2007, No. 839, § 1.

20-17-1222. Cooperation between a coroner or the state medical examiner and a procurement organization.

(a) A coroner and the state medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(b) If a coroner or the state medical examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the coroner or the state medical examiner and a post-mortem examination is going to be performed, unless the state medical examiner denies recovery in accordance with § 20-17-1223 the state medical examiner or designee shall conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c) A part may not be removed from the body of a decedent under the jurisdiction of a coroner or the state medical examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner or the state medical examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner or the state medical examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner or the state medical examiner.

History. Acts 2007, No. 839, § 1.

20-17-1223. Facilitation of anatomical gift from decedent whose body is under jurisdiction of coroner or the state medical examiner.

(a) Upon request of a procurement organization, a coroner or the state medical examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner or the state medical examiner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner or the state medical examiner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem examination results or other information received from the coroner or the state medical examiner only if relevant to transplantation or therapy.

(b) The coroner or the state medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner or the state medical examiner which the coroner or the state medical examiner determines may be relevant to the investigation.

(c) A person that has any information requested by a coroner or the state medical examiner pursuant to subsection (b) shall provide that information as expeditiously as possible to allow the coroner or the state medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(d) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner or after a post-mortem examination the coroner determines that no autopsy is required, or , if the decedent has been referred to the state medical examiner for post-mortem examination under § 12-12-318 and the state medical examiner determines that an autopsy is required, after consultation with the prosecuting attorney and the coroner, and it is

determined that the recovery of the parts that are the subject of an anatomical gift will not interfere with the autopsy, the coroner, state medical examiner, and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner or the state medical examiner has been or might be made, and after consultation with the coroner and prosecuting attorney, the state medical examiner believes the recovery of the part could interfere with determination of the decedent's cause and manner of death, the state medical examiner shall consult with the procurement organization or physician or technician designated by the procurement organization about the proposed recovery. The procurement organization shall provide the state medical examiner with all information that the procurement organization has that could relate to the cause or manner of the decedent's death. After consultation with the prosecuting attorney and coroner, the state medical examiner may allow the recovery.

(f) The coroner, prosecuting attorney, medical examiner, and a procurement organization shall enter into an agreement establishing protocols and procedures governing the relations between them when an anatomical gift of a part from a decedent whose body is under the jurisdiction of the coroner or medical examiner has been or might be made but the coroner or medical examiner believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death. Decisions regarding the recovery of the part from the decedent shall be made in accordance with the agreement. The coroner, prosecuting attorney, medical examiner, and the procurement organization shall evaluate the effectiveness of the agreement at regular intervals but no less frequently than every two years.

(g) In the absence of an agreement establishing protocols and procedures governing the relations between the state medical examiner and a procurement organization, if the state medical examiner intends to deny recovery of an organ for transplantation or therapy, the state medical examiner or designee, at the request of the procurement organization, shall attend the removal procedure for the organ before making a final determination not to allow the procurement organization to recover the organ. During the removal procedure, the state medical examiner or designee may allow recovery by the procurement organization to proceed, or, if the state medical examiner or designee believes that the organ may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

(h) If the procurement organization seeks to recover only an eye or tissue or both, the medical examiner or designee shall not be required to attend a removal procedure as provided in subsection (g).

(i) If the state medical examiner or designee denies recovery under subsection (g), the individual denying recovery shall:

(1) explain in a record the specific reasons for not allowing recovery of the part;

(2) include the specific reasons in the records of the state medical examiner; and

(3) provide a record with the specific reasons to the procurement organization.

(j) If the coroner or the state medical examiner or designee allows recovery of a part, the procurement organization will cooperate with the coroner and medical examiner in any documentation of injuries and the preservation and collection of evidence prior to and during the recovery of the part; and, upon request, shall cause the physician or technician who removes the part to provide the coroner and medical examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

(k) If the state medical examiner or designee is required to be present at a removal procedure under subsection (g), upon request the procurement organization requesting the recovery of the organ shall reimburse the state medical examiner or designee for the additional costs incurred in complying with subsection (g).

History. Acts 2007, No. 839, § 1.

A.C.R.C. Notes. Section 23 of the Revised Anatomical Gift Act (2006) differs substantially as adopted in Arkansas.

20-17-1224. [Reserved.]

A.C.R.C. Notes. Section 24 of the Revised Anatomical Gift Act (2006), concerning uniformity of application and construction, was not adopted in Arkansas.

20-17-1225. Relation to Electronic Signatures in Global And National Commerce Act.

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede Section 101(a) of that act, 15 U.S.C. § 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

History. Acts 2007, No. 839, § 1.

Meaning of "this act". Acts 2007, No. 839, codified as §§ 17-29-701, 20-17-102(g), and 20-17-705(b), § 20-17-1201 et seq., and § 27-1-801.

20-17-1226. [Reserved.]

A.C.R.C. Notes. Section 26 of the Revised Anatomical Gift Act (2006), a repealing provision, was not adopted in Arkansas.

20-17-1227. [Reserved.]

A.C.R.C. Notes. Section 27 of the Revised Anatomical Gift Act (2006), an effective date provision, was not adopted in Arkansas.

Subchapter 13 — Insolvent Cemetery Grant Fund Act

SECTION.
20-17-1301. Title.
20-17-1302. Findings and purpose.
20-17-1303. Insolvent cemetery grant fund.
20-17-1304. Powers and duties of Arkansas Cemetery Board.
20-17-1305. Eligibility for grants.
20-17-1306. Application.
20-17-1307. Grant payments — Amount.
20-17-1308. Use of grant awards.

20-17-1301. Title.

This subchapter shall be known and may be cited as the "Insolvent Cemetery Grant Fund Act".

History. Acts 2009, No. 429, § 3.

20-17-1302. Findings and purpose.

The General Assembly finds that:

(1) Perpetual care cemeteries provide historical and cultural benefits to the citizens of the State of Arkansas; and

(2) A grant program should be established to provide assistance to an insolvent perpetual care cemetery for its care, maintenance, and operation.

History. Acts 2009, No. 429, § 3.

20-17-1303. Insolvent cemetery grant fund.

An insolvent cemetery grant fund is established within the general operating fund of the Arkansas Cemetery Board for the care, maintenance, and operation of a perpetual care cemetery that has been:

(1) Declared insolvent by a state or federal court; and

(2) Acquired by and is controlled by a state, county, or municipal government or by a nonprofit organization as defined by § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

History. Acts 2009, No. 429, § 3.

20-17-1304. Powers and duties of Arkansas Cemetery Board.

The Arkansas Cemetery Board shall:

(1) Review and grant or deny all or part of a grant application submitted under this subchapter; and

(2) Establish by rule:

(A) Criteria for grant applications and awards;

(B) Oversight of all grant expenditures;

(C) Criteria for reporting and maintaining all grant moneys and expenditures; and

(D) Criteria for the review of grant awards and expenditures to prevent misuse or abuse of grant money.

History. Acts 2009, No. 429, § 3.

20-17-1305. Eligibility for grants.

To be eligible to receive a grant under this subchapter a perpetual care cemetery shall:

(1) Have been declared insolvent by a state or federal court;

(2) Be found by the Arkansas Cemetery Board to have historic significance to the local community or the State of Arkansas; and

(3) Be owned and controlled by a state, city, or municipal government or by a nonprofit organization as defined by § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

History. Acts 2009, No. 429, § 3.

20-17-1306. Application.

The owner of an insolvent perpetual care cemetery shall apply for grant payments under this subchapter in accordance with the rules established by the Arkansas Cemetery Board.

History. Acts 2009, No. 429, § 3.

20-17-1307. Grant payments — Amount.

(a) The Securities Commissioner shall make grant payments under this subchapter from:

(1) Funds appropriated by the General Assembly for that purpose; or

(2) Excess funds transferred under § 20-17-1025(f) to the insolvent cemetery grant fund from the insolvent cemetery loan fund.

(b) The annual amount that the Arkansas Cemetery Board may grant to an insolvent perpetual care cemetery under this subchapter shall not exceed thirty-five thousand dollars ($35,000).

History. Acts 2009, No. 429, § 3.

20-17-1308. Use of grant awards.

A grant award under this subchapter shall be used exclusively for the care, maintenance, and operation of an insolvent perpetual care cemetery, including without limitation the:

(1) Sale and conveyance of lots;

(2) Opening and closing of graves;

(3) Preparation of financial reports and legal documents;

(4) Maintenance of driveways and grounds;

(5) Removal of trash and debris;

(6) Cutting of grass; or

(7) Necessary improvements to streets, avenues, walks, or other public grounds of the cemetery.

History. Acts 2009, No. 429, § 3.

CHAPTER 18

VITAL STATISTICS ACT

SUBCHAPTER.

1. General Provisions.
4. Births and Adoptions.
6. Deaths.

Subchapter 1 — General Provisions

SECTION.

20-18-105. Penalties.

20-18-105. Penalties.

(a) The following persons shall be punished by a fine of not more than ten thousand dollars ($10,000) or by imprisonment for not more than five (5) years, or both:

(1) Any person who knowingly makes any false statement in a certificate, record, or report required to be filed under this chapter, or in an application for an amendment thereof or in an application for a certified copy of a vital record or who knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate, or amendment thereof;

(2) Any person who without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed under this chapter or a certified copy of the certificate, record, or report;

(3) Any person who knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another for any purpose of deception any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated or which is false in whole or in part or which relates to the birth of another person, whether living or deceased;

(4) Any employee of the Division of Vital Records of the Department of Health or any office designated under § 20-18-203(b) who knowingly furnishes or processes a certificate of birth or certified copy of a certificate of birth with the knowledge that it be used for the purposes of deception; and

(5) Any person who without lawful authority possesses any certificate, record, or report required by this chapter or a copy or certified copy of the certificate, record, or report knowing that it has been stolen or otherwise unlawfully obtained.

(b) The following persons shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than one (1) year, or both:

(1) Any person who knowingly refuses to provide information required by this chapter or regulations adopted pursuant to this chapter;

(2) Any person who knowingly transports or accepts for transportation, interment, or other disposition, a dead body without an accompanying permit as provided in this chapter; or

(3) Any person who knowingly neglects or violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him or her by this chapter.

History. Acts 1981, No. 120, § 27; A.S.A. 1947, § 82-527; Acts 1995, No. 1254, § 4; 2007, No. 827, § 164.

Amendments. The 2007 amendment substituted "knowingly" for "willfully and knowingly" throughout the section, substituted "knowledge" for "knowledge or intention" in (a)(4), and made a minor punctuation change.

Subchapter 3 — Records Generally

20-18-303. Duty to furnish information.

CASE NOTES

Suspension.

There was no error in suspending the licensee's funeral director license for one year and imposing a $1,500 fine, because the evidence was sufficient to support the determination by the Board of Embalmers and Funeral Directors that the licensee violated this section, when the Division of Vital Records repeatedly and fruitlessly contacted the licensee to obtain the demanded information and death certificate, and despite an offer by the Division to help facilitate the filing, the Division was required to take the extraordinary step of issuing the death certificate under its own authority. Collins v. Ark. Bd. of Embalmers & Funeral Dirs., 2009 Ark. App. 498, 324 S.W.3d 716 (2009).

Subchapter 4 — Births and Adoptions

SECTION.
20-18-403. Judicial procedure to register birth.
20-18-410. Certificate of birth resulting in stillbirth.

20-18-403. Judicial procedure to register birth.

(a) If the State Registrar of Vital Records refuses to file a certificate of birth under § 20-18-401 or § 20-18-402, a petition may be filed with a court of competent jurisdiction for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) The petition shall be made on a form prescribed and furnished or approved by the state registrar and shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in this state;

(2) That no certificate of birth of the person can be found in the Division of Vital Records of the Department of Health;

(3) That diligent efforts by the petitioner have failed to obtain the evidence required in accordance with § 20-18-401 or § 20-18-402 and regulations adopted pursuant to § 20-18-401 or § 20-18-402;

(4) That the state registrar has refused to file a certificate of birth; and

(5) Such other allegations as may be required.

(c) The petition shall be accompanied by a statement of the state registrar made in accordance with § 20-18-401 or § 20-18-402 and all documentary evidence which was submitted to the state registrar in support of the registration.

(d) The court shall fix a time and place for hearing the petition and shall give the state registrar ten (10) days' notice of the hearing. The state registrar or his or her authorized representative may appear and testify in the proceeding.

(e) If the court finds from the evidence presented that the person for whom a certificate of birth is sought was born in the state, the court shall make findings as to the place and date of birth, parentage, and other findings as the case may require and shall issue an order on a form prescribed and furnished or approved by the state registrar to establish a court-ordered certificate of birth. This order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

(f) The clerk of court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the court-ordered certificate of birth.

History. Acts 1981, No. 120, § 10; A.S.A. 1947, § 82-510; Acts 1995, No. 1254, § 18.

Publisher's Notes. This section is being set out to reflect a grammatical correction in (b)(3).

20-18-410. Certificate of birth resulting in stillbirth.

(a) As used in this section:

(1) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record the birth of a stillborn child; and

(2) "Stillbirth" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than twenty (20) completed weeks.

(b) A person who is required to file a fetal death certificate under § 20-18-603 shall advise the parent or parents of a stillborn child:

(1) That a parent may but is not required to request the preparation of a certificate of birth resulting in stillbirth;

(2) That a parent may obtain a certificate of birth resulting in stillbirth by contacting the Division of Vital Records of the Department of Health to request the certificate and paying the required fee; and

(3) Regarding the way in which a parent may contact the division to request the certificate of birth resulting in stillbirth.

(c)(1) If a parent requests that a certificate of birth resulting in stillbirth be prepared, the parent may provide a name for a stillborn child to be included on the certificate of birth resulting in stillbirth.

(2) If the requesting parent does not wish to provide a name, the division shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the requesting parent.

(3) The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as appears on the original or amended fetal death certificate.

(d) A certificate of birth resulting in stillbirth shall include the state file number of the corresponding fetal death certificate.

(e) The division shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate.

(f) The division shall not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(g) If a fetal death certificate was issued for a stillbirth, a parent may request that the division issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued.

(h) The division shall prescribe the form and content of a certificate of birth resulting in stillbirth.

(i) A parent may request the division to prepare and issue a certificate of birth resulting in stillbirth without regard to whether the fetal death occurred on or before July 31, 2007.

History. Acts 2007, No. 509, § 1.

Subchapter 6 — Deaths

SECTION.
20-18-601. Registration generally.

20-18-601. Registration generally.

(a)(1) A death certificate for each death that occurs in this state shall be filed with the Division of Vital Records of the Department of Health or as otherwise directed by the State Registrar of Vital Records within ten (10) days after the death or the finding of a dead body and shall be registered if the death certificate has been completed and filed in accordance with this section.

(2) A fact of death record for each death that occurs in this state shall be filed with the division within three (3) calendar days after the death or the finding of a dead body.

(3)(A) If the place of death is unknown but the body is found in this state, the death certificate shall be completed and filed in accordance with this section.

(B) The place where the body is found shall be shown as the place of death.

(C)(i) If the date of death is unknown, it shall be determined by approximation.

(ii) If the date cannot be determined by approximation, the date found shall be entered and identified as such.

(4)(A) If a death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state, and the place where the body is first removed shall be considered the place of death.

(B) If a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as the place of death can be determined.

(C) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or the person acting as the funeral director who first assumes custody of the dead body shall:

(1) File the death certificate and fact of death record;

(2) Obtain the personal data from the next of kin or the best qualified person or source available;

(3) Obtain the medical certification from the person responsible for the medical certification, as set forth in subsection (c) of this section; and

(4) Provide a death certificate that contains sufficient information to identify the decedent to the certifier.

(c)(1)(A) The medical certification shall be completed, signed, and returned to the funeral director within two (2) business days after receipt of the death certificate by the physician in charge of the patient's care for the illness or condition that resulted in death, except when inquiry is required by § 12-12-315, § 12-12-318, or § 14-15-301 et seq.

(B) In the absence of the physician or with his or her approval, the certificate may be completed and signed by his or her associate physician, by the chief medical officer of the institution in which death occurred, by the pathologist who performed an autopsy upon the decedent, or by a registered nurse as provided in this subsection (c), if the individual has access to the medical history of the case and has reviewed the coroner's report if required and if the death is due to natural causes. The individual completing the cause-of-death section of the certificate shall attest to its accuracy either by a signature or by approved electronic process.

(2) The Arkansas State Medical Board shall enforce by rule subdivision (c)(1) of this section concerning the time period in which the medical certification shall be executed.

(3) A registered nurse employed by the attending hospice may complete and sign the medical certification of death and pronounce death for a patient who is terminally ill, whose death is anticipated, who is receiving services from a hospice program certified under § 20-7-117, and who dies in a hospice inpatient program or as a hospice patient in a nursing home.

(4) If the hospice patient dies in the home, the registered nurse may make pronouncement of death. However, the coroner and the chief law enforcement official of the county or municipality where death occurred shall be immediately notified in accordance with § 12-12-315.

(5) The Department of Health shall provide hospitals, nursing homes, and hospices with the appropriate death certificate forms, which will be made available to the certifier of death. When death occurs outside these health facilities, the funeral home shall provide the death certificate to the certifier of death.

(d) If the cause of death appears to be other than the illness or condition for which the deceased was being treated or if inquiry is required by either of the laws referred to in subsection (c) of this section, the case shall be referred to the office of the State Medical Examiner or coroner in the jurisdiction where the death occurred or the body was found for investigation to determine and certify the cause of death. If the State Medical Examiner or county coroner determines that the case does not fall within his or her jurisdiction, he or she shall within twenty-four (24) hours refer the case back to the physician for completion of the medical certification.

(e) When inquiry is required by either of the laws referred to in subsection (c) of this section, the State Medical Examiner or coroner in the jurisdiction where the death occurred or the body was found shall determine the cause of death and shall complete and sign the medical certification within forty-eight (48) hours after taking charge of the case.

(f) If the cause of death cannot be determined within forty-eight (48) hours after death, the medical certification shall be completed as provided by regulation. The attending physician or State Medical Examiner or county coroner shall give the funeral director or person acting as the funeral director notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or State Medical Examiner or county coroner.

(g) When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar only upon receipt of an order of a court of competent jurisdiction, which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "Presumptive" and shall show on its face the date of death as determined by the court and the date of registration and shall identify the court and the date of the decree.

(h) Upon receipt of autopsy results or other information that would change the information in the cause-of-death section of the death

certificate from that originally reported, the certifier shall immediately file a supplemental report of cause of death with the division in order to amend the record.

History. Acts 1981, No. 120, § 13; A.S.A. 1947, § 82-513; Acts 1989, No. 396, § 3; 1995, No. 311, § 1; 1995, No. 1254, § 25; 2007, No. 702, § 1; 2009, No. 1288, § 2.

Amendments. The 2007 amendment added (a)(2) and redesignated the remaining subdivisions accordingly; added the (a)(3)(B) and (a)(3)(C) designations; inserted "the place of death" following "insofar as" in (a)(4)(B); added the (b)(1) through (b)(4) designations; added "and fact of death record" in (b)(1); substituted "for the medical certification" for "therefor" in (b)(3); substituted "Provide" for "The funeral director or the person acting as the funeral director shall provide" in (b)(4); and made related and stylistic changes.

The 2009 amendment added the (c)(1)(A) designation; redesignated former (c)(2) as (c)(1)(B); substituted "this subsection" for "subsection (c)(2) of this section" and "and has reviewed the coroner's report if required and if the" for "views the deceased at or after death and" in (c)(1)(B); added (c)(2); inserted "and pronounce death" in (c)(3); deleted "county" preceding "coroner" in (c)(4); in (c)(5), substituted "certifier" for "attending physicians, coroners, or other certifiiers" in the first sentence, and added "of death" at the end of the second sentence; (c)(2); and made minor stylistic changes in (c)(1) and (c)(5).

Subchapter 7 — Putative Father Registry

RESEARCH REFERENCES

ALR. Requirements and Effects of Putative Father Registries. 28 A.L.R.6th 349.

20-18-702. Creation.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Public Health and Welfare, 28 U. Ark. Little Rock L. Rev. 389.

CASE NOTES

In General.

Where the putative father and the child's mother had a brief romantic relationship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. Escobedo v. Nickita, 365 Ark. 548, 231 S.W.3d 601 (2006).

CHAPTER 19

ANIMALS

SUBCHAPTER.

1. General Provisions.
2. Rabies Vaccinations Generally. [Repealed.]
3. Rabies Control Act.
5. Ownership and Possession of Certain Large Carnivores.

Subchapter 1 — General Provisions

SECTION.

20-19-103. Sterilization of impounded dogs and cats.

20-19-103. Sterilization of impounded dogs and cats.

(a) It shall be unlawful for any pound, shelter, humane organization, or animal rescue group to release any dog or cat which has not been sterilized to a new owner except as provided in subsection (b) of this section.

(b)(1) In any county in the state, it shall be unlawful for any pound, shelter, humane organization, or animal rescue group to release to a new owner any dog or cat over three (3) months of age which has not been sterilized except as provided in subdivision (b)(2) of this section.

(2)(A) An animal which in the opinion of a veterinarian licensed to practice veterinary medicine in the State of Arkansas is medically compromised to the extent that it cannot withstand immediate sterilization may be temporarily released pursuant to a foster care agreement until such time as it can safely be sterilized or until two (2) veterinarians licensed to practice veterinary medicine in the State of Arkansas certify that it is unlikely that the animal will ever recover to the extent that it can safely be sterilized.

(B)(i) At that time, ownership of the animal may be transferred to an owner who certifies that the animal will not be used for breeding.

(ii) An owner who violates the agreement shall be subject to the penalties set forth in subsection (c) of this section.

(c) Violations of this section are declared to be misdemeanors punishable by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History. Acts 1981, No. 869, §§ 1, 2; A.S.A. 1947, §§ 78-214, 78-215; Acts 1995, No. 839, § 1; 1999, No. 488, § 2; 2011, No. 994, § 1.

Amendments. The 2011 amendment, in (a), substituted "or animal rescue group" for "supported wholly or partly by public funds" and "subsection (b)" for "subsection (c)," and deleted "a promise to spay or neuter the animal has been signed by the person acquiring the animal" from the end; deleted former (b) and redesignated former (c) and (d) as present (b) and (c); and, in (b)(1), deleted "having a population of three hundred thousand (300,000) or more persons according to the most

recent federal decennial census" following "state," inserted "or animal rescue group," and substituted "three (3)" for "two (2)."

Subchapter 2 — Rabies Vaccinations Generally

SECTION.
20-19-201 — 20-19-203. [Repealed.]

20-19-201 — 20-19-203. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 159, § 1. The subchapter was derived from the following sources:

20-19-201. Acts 1945, No. 171, § 3; A.S.A. 1947, § 78-203.

20-19-202. Acts 1945, No. 171, §§ 1, 4; 1955, No. 3, § 1; A.S.A. 1947, §§ 78-201, 78-204; Acts 2005, No. 1994, § 114.

20-19-203. Acts 1945, No. 171, § 2; 1951, No. 374, § 1; 1961, No. 447, § 1; A.S.A. 1947, § 78-202.

Subchapter 3 — Rabies Control Act

SECTION.
20-19-302. Definitions.
20-19-303. Power of political subdivisions not limited — Applicability.
20-19-305. Vaccination for dogs, cats, and other animals required.
20-19-307. Confinement of animal when person bitten.
20-19-308. Shipment to laboratory of head of animal suspected of being rabid.
20-19-312. State Board of Health's authority to regulate.

20-19-302. Definitions.

As used in this subchapter:

(1) "Animal" means any animal other than dogs or cats that may be affected by rabies;

(2) "Cats" means any domestic feline animal, species Felis catus;

(3) "Dogs" means any domestic canine animal, species Canis familiaris;

(4) "Has been bitten" means the skin has been penetrated by an animal's teeth and saliva has contacted a break or abrasion of the skin;

(5) "Owner" means any person who:

(A) Has a right of property in a dog or cat or other animal;

(B) Keeps, harbors, cares for, or acts as the custodian of a dog or cat or other animal; or

(C) Knowingly permits a dog or cat or other animal to remain on or about any premises occupied by him or her; and

(6) "Vaccination against rabies" means the injection, subcutaneously or otherwise, of antirabic vaccine, as approved by the United States Department of Agriculture or the State Board of Health and administered by a licensed veterinarian or agent of the Department of Health.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 2; 1975, No. 725, § 1; A.S.A. 1947, § 82-2402; Acts 2009, No. 159, § 2; 2011, No. 93, § 1.

Amendments. The 2009 amendment rewrote (4); redesignated (5); substituted "the State Board of Health" for "State Veterinarian" in (6); and made related and stylistic changes.

The 2011 amendment rewrote (2) and (3); and deleted "canine" preceding "anti-rabic" in (6).

20-19-303. Power of political subdivisions not limited — Applicability.

(a) This subchapter does not limit in any manner the power of any municipality or political subdivision to prohibit dogs or cats or other animals from running at large whether or not they have been vaccinated against rabies as provided in this subchapter.

(b) This subchapter does not limit in any manner the power of any municipality or other political subdivision to further control and regulate dogs or cats or other animals in such municipality or political subdivision.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 7; 1975, No. 725, § 5; A.S.A. 1947, § 82-2407; Acts 2009, No. 159, § 3.

Amendments. The 2009 amendment redesignated (a)(2) as present (b); deleted former (b); and made minor stylistic changes in (a) and (b).

20-19-305. Vaccination for dogs, cats, and other animals required.

All dogs, cats, and other animals shall be vaccinated against rabies as required by the State Board of Health.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 2; 1975, No. 725, § 1; A.S.A. 1947, § 82-2402; Acts 2009, No. 159, § 4; 2011, No. 93, § 2.

Amendments. The 2009 amendment substituted "or as required by the State Board of Health" for "in accordance with § 20-19-201 et seq."

The 2011 amendment substituted "cats, and other animals" for "and cats" in the section head and in the section; and deleted "annually or" following "against rabies."

20-19-307. Confinement of animal when person bitten.

(a)(1) Whenever the health authorities, county sheriff's office, or municipal police officers in cooperation with health authorities receive information that any person has been bitten by a dog or cat or other animal, these local public officials acting in cooperation shall have the dog or other animal confined and observed.

(2) If there is no local facility available for confining the dog or cat or other animal, it shall be the owner's responsibility to make satisfactory arrangements or to prepare a facility for the purpose of confinement.

(b)(1) The offending dog or cat shall be confined for a period of ten (10) days by a veterinarian or owner or public pound.

(2)(A) All other species of animals are to be confined and observed for rabies in the same manner, except the time element will vary so as to compensate for the difference in the incubation period of the disease.

(B) This adjusted time element is to be determined by consultation with the Department of Health.

(C) If there is no known incubation period, the animal may be euthanized and tested at the discretion of the department.

(3) The veterinarian, owner, or public pound management personnel shall notify the local public health authorities of the disposition of the dog or animal at the termination of the confinement.

(c)(1) Any confinement and observation expense incurred in the handling of any dog or cat or other animal under this subchapter shall be borne by the owner.

(2) If the dog or cat or other animal is a stray and has no owner, the confinement and observation expense shall be borne by the person bitten or, if a minor, by the head of the family.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 3; 1975, No. 725, § 2; A.S.A. 1947, § 82-2403; Acts 2009, No. 159, § 5.

Amendments. The 2009 amendment redesignated (a) and deleted "by a licensed veterinarian" following "confined and observed" in (a)(1); in (b)(2), inserted (b)(2)(C) and redesignated the remaining subsections accordingly, and substituted "the Department of Health" for "the Division of Health of the Department of Health and Human Services authorities" in (b)(2)(B).

20-19-308. Shipment to laboratory of head of animal suspected of being rabid.

Any person causing the death of an animal, either wild or domesticated, suspected of being rabid shall cause the head of the animal to be presented to a county health unit of the county in which the animal was killed.

History. Acts 1953, No. 238, § 1; Acts 1968 (1st Ex. Sess.), No. 11, § 6; A.S.A. 1947, §§ 82-610, 82-2406; Acts 2005, No. 1994, § 116; 2009, No. 159, § 6.

Amendments. The 2009 amendment rewrote the section.

20-19-312. State Board of Health's authority to regulate.

(a) The State Board of Health shall adopt rules necessary to carry out this subchapter, with subsequent amendments as needed.

(b) The Arkansas Livestock and Poultry Commission may adopt rules as are necessary pertaining to dogs and cats transported or moved into Arkansas for any purpose.

History. Acts 1968 (1st Ex. Sess.), No. 11, § 8; A.S.A. 1947, § 82-2408; Acts 2011, No. 93, § 3.

Amendments. The 2011 amendment added (b); and, in (a), substituted "adopt rules" for "promulgate such rules and regulations as are" and deleted "the purposes or provisions of" preceding "this subchapter."

Subchapter 5 — Ownership and Possession of Certain Large Carnivores

SECTION.
20-19-501. Definitions.

20-19-501. Definitions.

As used in this subchapter:

(1) "Large carnivore" means any live individual of those species of animals that are inherently dangerous to humans, including:

(A) Bears;

(B) Lions; and

(C) Tigers;

(2) "Possessor" means a person who owns, keeps, or has custody or control of a large carnivore; and

(3)(A) "Wildlife sanctuary" means a nonprofit organization under section 501(c)(3) of the Internal Revenue Code as it existed on January 1, 2005, that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced large carnivores are provided care for their lifetimes.

(B) "Wildlife sanctuary" does not mean a place that:

(i) Conducts any activity that is not inherent to the large carnivore's nature;

(ii) Uses the large carnivore for any type of entertainment;

(iii) Sells, trades, or barters the large carnivore or the large carnivore's body parts; or

(iv) Breeds the large carnivore for purposes of sale.

History. Acts 2005, No. 2226, § 1; 2007, No. 827, § 165.

Amendments. The 2007 amendment, in (1), substituted "Bears" for "Tigers" in (A) and "Tigers" for "All bears" in (C); inserted "on January 1, 2005" in (3)(A); and made related and stylistic changes.

CHAPTER 21

RADIATION PROTECTION

SUBCHAPTER.
2. Ionizing Radiation.
5. Nuclear Planning and Response Grants.

Subchapter 2 — Ionizing Radiation

SECTION.
20-21-217. Licensing and registration requirements — Compliance with standards — Fees.

20-21-217. Licensing and registration requirements — Compliance with standards — Fees.

(a) In licensing and regulation of radioactive material or of any activity which results in the production of radioactive materials so defined, the State Radiation Control Agency shall require compliance with applicable standards promulgated by the agency which are equivalent to or more stringent than standards adopted and enforced by the Nuclear Regulatory Commission for the same purpose, including requirements and standards promulgated by the Environmental Protection Agency.

(b) Until the State Board of Health promulgates rules under subsection (d) of this section, the agency may charge and collect the following annual fees associated with licensing and registration of sources of ionizing radiation:

(1) Hospitals or medical centers:

(A) Category I-A $900.00
(B) Category I-B 700.00
(C) Category II-A 650.00
(D) Category II-B 450.00
(E) Category III 200.00

(2) Radioactive material licenses:

(A) Private practice, other than teletherapy units or particle accelerators $100.00

(B) Radiography:

(i) In plant ..... 350.00 for first bay ..... 500.00 for two (2) or more bays

(ii) Field 1,000.00

(C) Wireline service operation ..... 300.00 for 1 to 3 sources ..... 500.00 for 4 or more sources

(D) Academic:

(i) Broad 500.00
(ii) Other 200.00

(E) Gas chromatograph devices and lead analyzers 100.00

(F) Nuclear gauges ..... 300.00 for 1 to 5 gauges ..... 500.00 for 6 or more gauges

(G) Particle accelerators, nonmedical 200.00
(H) In vitro laboratory testing 25.00
(I) Irradiators 1,000.00
(J) Nuclear pharmacy 1,000.00
(K) Mobile nuclear medicine service 1,200.00
(L) Consultants 250.00

(3) General licensed devices: Initial registration and annual fees for the receipt, possession, or use of radioactive material under a general license or a license obtained through reciprocity, as defined by the agency, shall be as follows:

(A) Certain measuring, gauging, and controlling devices .$300.00
(B) Generally licensed gas chromatographs 200.00

(C) Static elimination devices 100.00
(D) Source material devices 500.00
(E) Devices containing depleted uranium 500.00
(F) Public safety devices containing radioactive material ...50.00
(G) All other general license registrations other than those specified above 150.00
(4) Other:
(A) Medical, therapy, nonhospital unit .....$250.00 for first unit .....175.00 for each additional unit
(B) Particle accelerator medical, nonhospital unit ..... 450.00 for first unit ..... 300.00 for each additional unit
(C) "Arkansas State Board of Health Rules and Regulations for Control of Sources of Ionizing Radiation" ..... 0.00 for first copy ..... 30.00 for each additional copy
(D) Naturally occurring radioactive material license 2,500.00
(E) Amendment to existing license .....50.00 per amendment
(5) Reciprocity:
(A) Naturally occurring radioactive material $2,500.00
(B) Radiography, field 1,000.00
(C) Wireline 500.00
(D) Nuclear gauge 500.00
(E) Consultant 100.00
(6) Late fees: A late fee equal to ten percent (10%) of the applicable fee shall be charged for fees not received within sixty (60) days of the invoiced due date and for every sixty (60) days thereafter.

(c) The State Radiation Control Agency may charge and collect the following annual fees associated with X-ray registrations:
(1) All X-ray units, $65.00 per tube up to a maximum of $260.00
(2) Vendor services providing radiation equipment services or radiation safety services, or both .....65.00.

(d)(1) For the fees under subsection (b) of this section, the board shall adopt rules to establish fees at a level to sustain operations of the State Radiation Control Agency's mandated programs.
(2) The fees shall not:
(A) Conflict with federal program schedules; or
(B) Exceed twenty-five percent (25%) of the fees that would be levied by the United States Nuclear Regulatory Commission if the commission were to regulate the State Radiation Control Agency's mandated programs.

(e) Each application for reciprocal recognition of an out-of-state license or of an out-of-state registration shall be accompanied by the applicable annual fee, provided that no fee has been submitted during the calendar year of the application.

(f)(1) The annual fee shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.
(2) Applications for new licenses or registrations shall be accompanied by the appropriate fees. The applicants shall be charged for a full

calendar year regardless of the month the license or registration is issued.

(3) Applications for amendments to licenses or registration certificates which result in a change to a more costly category shall be accompanied by a fee equal to the difference between the fee for the current category and the one to which the amended license or certificate will escalate.

(4) Fee payments shall be by check, draft, or money order made payable to the Department of Health.

(5) In any case in which the agency finds that an applicant for a new license or new certificate of registration has failed to pay the fee prescribed in this section, the agency shall not process that application until the fee is paid.

(6) In any case in which the agency finds that a person has failed to pay a fee prescribed by this section within ninety (90) days of the date due, the agency may issue an order to show cause why that registration, license, or other service should not be revoked, suspended, or terminated, as appropriate.

(g) Annual fees shall not be required for those applicants, licensees, registrants, or other applicable persons whose use of sources of radiation is certified as financed solely by the General Revenue Fund of the State of Arkansas.

(h) All fees levied and collected under this section are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(i) Subject to the rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds relative to licensing and registration for use of radioactive materials and X-ray equipment that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1961 (2nd Ex. Sess.), No. 8, § 5; 1983, No. 19, § 6; A.S.A. 1947, § 82-1516; Acts 1987, No. 504, § 2; 1995, No. 796, § 3; 2003, No. 1119, §§ 4-6; 2005, No. 929, § 1; 2011, No. 596, § 1.

Amendments. The 2011 amendment added "Until the State Board of Health promulgates rules under subsection (d) of this section" at the beginning of (b); deleted former (b)(2) and redesignated the remaining subdivisions accordingly; added (c) and (d) and redesignated the remaining subsections accordingly; in (f)(4), deleted "Division of Health of the" following "payable to the" and "and Human Services" following "Department of Health"; and substituted "department" for "division" in (i).

Subchapter 5 — Nuclear Planning and Response Grants

SECTION.

20-21-504. Disbursal of funds.

20-21-504. Disbursal of funds.

In disbursing funds to eligible counties which have satisfactorily fulfilled the requirements of the cooperative agreement as set out in § 20-21-503, the Department of Health shall remit a maximum of ten thousand dollars ($10,000) to each of the eligible counties to be payable during the second month of each quarter of the state fiscal year, which months are August, November, February, and May. The payments shall be made in equal quarterly installments of not to exceed two thousand five hundred dollars ($2,500).

History. Acts 1983, No. 536, § 4; A.S.A. 1947, § 82-1549.

A.C.R.C. Notes. Acts 2011, No. 1102, § 21, provided: "NUCLEAR DISASTER PLANNING GRANTS. The funds appropriated for Grants for Nuclear Planning shall be disbursed to those counties in this State which are required by state or federal regulation to maintain a Radiological Response Plan because of their close proximity to a nuclear electricity generating facility, and shall be issued solely for the purpose of defraying the cost of preparing for and participating in actual nuclear disaster incidents or practice nuclear disaster exercises. Each county shall be eligible for that proportion of these funds as is determined fair and necessary under guidelines to be developed by the Arkansas Department of Health. However, a minimum of $5,000 per county of said funds shall be utilized to support and operate a County Emergency Management Office. These county offices shall be prepared to respond to any Arkansas Nuclear I emergency. These funds shall be equally distributed to each Emergency Management Office in the following counties: Pope County, Johnson County, Yell County, Conway County and Logan County.

"The funds appropriated for Grants for Nuclear Planning shall be distributed in quarterly installments by the Arkansas Department of Health to the Arkansas Department of Emergency Management for the sole purpose of defraying costs associated with preparing for and participating in actual nuclear disaster incidents or practice nuclear disaster emergency exercises involving nuclear electricity generating facilities in this State.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

CHAPTER 22

FIRE PREVENTION, PROTECTION, AND SAFETY

SUBCHAPTER.

2. State Fire Prevention Commission.
6. Fire Extinguishers.
7. Fireworks.
8. Fire Protection Services.
9. Volunteer Fire Departments.

Subchapter 2 — State Fire Prevention Commission

SECTION.

20-22-202. Creation — Members.

20-22-202. Creation — Members.

(a)(1) The State Fire Prevention Commission shall be composed of eleven (11) residents of the State of Arkansas.

(2) Membership of the State Fire Prevention Commission shall consist of the following members by virtue of their office:

(A) The State Fire Marshal or his or her designee;

(B) The Director of the Arkansas Fire Training Academy or his or her designee; and

(C) The Chair of the Arkansas Forestry Commission or his or her designee.

(3) The following members of the State Fire Prevention Commission shall be appointed by the Governor:

(A) One (1) volunteer firefighter below the rank of chief;

(B) One (1) volunteer fire chief or chief officer of a voluntary municipal fire department;

(C) One (1) full-time fire chief or chief officer of a municipality having a population of more than sixty thousand (60,000) residents;

(D) One (1) full-time firefighter or fire department officer of a municipality having a population of less than sixty thousand (60,000) residents;

(E) Two (2) members at large active in fire protection or safety; and

(F) Two (2) persons representing the general public.

(b) Appointed members shall be appointed to three-year terms. All appointed members shall serve until their respective successors are appointed and qualify.

(c) Vacancies shall be filled by appointment by the Governor for the unexpired terms.

(d) The members of the State Fire Prevention Commission shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1979, No. 852, §§ 5, 6; 1983, No. 690, § 3; A.S.A. 1947, §§ 19-2169, 19-2170; Acts 1997, No. 250, § 193; 2007, No. 708, § 1.

Amendments. The 2007 amendment inserted "or his or her designee" in (a)(2)(A) and (a)(2)(B); and in (a)(2)(C), substituted "Chair" for "Director" and "Commission" for "Department."

Subchapter 3 — Open-Air Fires

20-22-304. Civil action for damages.

RESEARCH REFERENCES

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

Subchapter 6 — Fire Extinguishers

SECTION.
20-22-601. Legislative intent.
20-22-602. Definitions.
20-22-603. Exceptions.
20-22-604. Penalties.
20-22-606. Arkansas Fire Protection Licensing Board — Creation — Members.
20-22-607. Arkansas Fire Protection Licensing Board — Powers and duties.
20-22-608. State Fire Marshal — Powers and duties.
20-22-609. License, permit, or certificate required — Compliance with subchapter — Penalties.
20-22-610. License, permit, or certificate — Application — Fees.
20-22-611. License, permit, or certificate — Qualifications.
20-22-612. License, permit, or certificate — Previously engaged persons.
20-22-613. Actions.
20-22-614. [Repealed.]

20-22-601. Legislative intent.

It is the purpose and intent of this subchapter to provide for monitoring the sale, installation, and servicing of portable fire extinguishers and the sale, installation, and servicing of fixed fire protection systems and the planning, sale, installation, and servicing of fire protection sprinkler systems and to provide for the registration, licensure, and monitoring of businesses and persons providing the services, in order to protect and promote public safety by minimizing personal injury and property damages which might result from inadequate, unreliable, unsafe, or improperly installed or maintained portable fire extinguishers, fixed fire protection systems, or fire protection sprinkler systems.

History. Acts 1987, No. 532, § 1; 2009, No. 422, § 1.

Amendments. The 2009 amendment substituted "protection" for "extinguisher" in two places, inserted "planning" and "and monitoring," and made related and minor stylistic changes.

20-22-602. Definitions.

As used in this subchapter:

(1) "Apprentice" means a qualified person:

(A) Enrolled as required in an apprenticeship program recognized by the Arkansas Fire Protection Licensing Board; and

(B) Who may perform work entitled by the licensee under the direct supervision of a licensed employee;

(2) "Fire protection sprinkler system" means:

(A) An assembly of underground, overhead, or other piping or conduits that convey water with or without other agents to fire sprinkler heads, fire sprinkler nozzles, interior fire hoses, or other devices in order to extinguish, control, or contain fire and so provide protection from exposure to fire or the products of combustion; and

(B) A standpipe and hose system as defined under the provisions of National Fire Protection Association pamphlet number fourteen (No. 14);

(3) "Fire protection sprinkler system business" means firms engaged in the planning, fire protection layout, selling, installing, maintaining, inspecting, or servicing of fire protection sprinkler systems, including without limitation standpipes, hose stations, and fire pumps;

(4) "Fire protection sprinkler systems inspector" means a qualified person who:

(A) Is employed full time by a licensed fire protection sprinkler contractor in the State of Arkansas and who has met the requirements to perform inspections of fire protection sprinkler systems in accordance with this subchapter; and

(B) May perform corrections of deficiencies from an inspection;

(5) "Firm" means any person, partnership, corporation, or association;

(6) "Fixed fire protection systems" means fire extinguisher or fire suppression systems, including without limitation:

(A) Fire extinguishing or fire suppression systems installed to protect the hoods and ductwork of exhaust systems designed for the removal of smoke and grease-laden vapors from commercial cooking equipment; and

(B) Listed or approved fire protection systems or suppression systems installed and maintained according to the standards adopted in the rules of the Arkansas Fire Protection Licensing Board;

(7) "Hydrostatic testing" means pressure testing by hydrostatic methods;

(8) "Portable fire extinguisher" means any device that contains within it chemicals, fluids, powder, liquids, or gases for extinguishing fires;

(9) "Qualified person" means a person meeting the qualifications under § 20-22-611;

(10) "Responsible managing employee" means an individual who is a full-time licensed employee of a registered fire protection sprinkler system business and who is designated by the fire protection sprinkler system business to be responsible for assuring that all installations and servicing of fire protection sprinkler systems are performed in accordance with all applicable provisions, rules, and guidelines;

(11) "Service and servicing" means physically installing portable fire extinguishers, fixed fire protection systems, or fire protection sprinkler systems by charging, filling, maintaining, recharging, refilling, repairing, hanging, locating, or retesting the portable fire extinguisher, fixed fire protection system, or fire protection sprinkler system; and

(12)(A) "Sprinkler fitter" means a qualified person to oversee:

(i) An apprentice; or

(ii) The initial installation or servicing of fire protection sprinkler systems.

(B) A sprinkler fitter may perform corrections of deficiencies from an inspection.

History. Acts 1977, No. 743, § 2; 1979, No. 862, § 1; 1983, No. 782, §§ 1-4; 1985, No. 702, § 2; A.S.A. 1947, § 82-833; Acts 1987, No. 532, § 2; 1993, No. 1215, § 1; 1999, No. 1287, § 1; 2003, No. 1074, § 1; 2009, No. 422, § 2; 2011, No. 838, § 1.

Amendments. The 2009 amendment substituted "fire sprinkler heads, fire sprinkler nozzles, interior fire hoses" for "dispersal openings" in (3)(A); inserted "protection" in three places in (4); inserted (5) and redesignated the subsequent subsections; rewrote (7), (11), and (12); and made related and minor stylistic changes.

The 2011 amendment inserted present (1), (4)(B), (9), and (12), deleted former (1), (2), and (9), and redesignated the remaining subdivisions accordingly; and in present (3), inserted "fire protection layout" and added "including without limitation standpipes, hose stations, and fire pumps" at the end; and, in present (10), inserted the first occurrence of "protection," deleted "firm" preceding "and who is," and substituted "designated by the fire protection sprinkler system system" for "designated by the firm."

20-22-603. Exceptions.

(a) The provisions of this subchapter do not apply to the following:

(1) The filling or charging of a portable fire extinguisher by the manufacturer before its initial sale;

(2) The visual inspections by a firm of its own portable fire extinguishers, fixed fire protection systems, or fire protection sprinkler systems by its own personnel who are specifically trained to conduct visual inspections;

(3) The hydrostatic testing by a firm of its own United States Department of Transportation-specification compressed gas cylinders used for or with fire extinguishers or its own pressure vessels, other than department-specification cylinders used as fire extinguishers, when the testing is performed by personnel of the firm who have been specially trained to perform the testing;

(4) Firms engaged in the retailing or wholesaling of portable fire extinguishers as defined in § 20-22-602(8) but not engaged in the installing, servicing, or recharging of portable fire extinguishers shall only be exempt from the registration and licensing provisions as outlined in § 20-22-610, but all other provisions of this subchapter shall apply;

(5) Fire departments recharging portable fire extinguishers for fire department use only if:

(A) The fire department personnel performing the services are trained in the proper filling and recharging of the portable fire extinguishers;

(B) All work is performed according to the standards adopted and the rules of the Arkansas Fire Protection Licensing Board and the National Fire Protection Association pamphlet number ten (No. 10);

(C)(i) Each of the fire department personnel performing the filling and recharging of the portable fire extinguishers holds a current applicable individual license issued by the board.

(ii) Only portable fire extinguishers owned by the particular fire department are subject to this exception; and

(D) All registration and licensure fees for licenses issued for these individual licenses are waived; and

(6) The hydrostatic testing (Class A Hydro list) by a firm of United States Department of Transportation specification compressed gas cylinder used for or with a portable fire extinguisher or a fixed fire protection system owned by other firms or individuals:

(A) When the testing is performed by personnel who have been specifically trained to perform the testing;

(B) When the firm is currently licensed or permitted by the United States Department of Transportation to perform Class A Hydro tests; and

(C) Where the hydrostatic testing of the cylinders is the only service performed on behalf of the individual or firm or its agent which owns the cylinder.

History. Acts 1977, No. 743, § 9; 1983, No. 782, §§ 11, 12; 1985, No. 702, § 8; A.S.A. 1947, § 82-840; Acts 1987, No. 532, § 5; 1991, No. 392, § 1; 1993, No. 1215, § 2; 2003, No. 1074, § 2; 2009, No. 422, § 3.

Amendments. The 2009 amendment, in (a), in (a)(1) substituted "visual inspections" for "servicing" and substituted "who are specificially trained to conduct visual inspections," inserted "as defined in § 20-22-602(11)" in (a)(4), rewrote (a)(5), and inserted (a)(6); deleted (b) and (c); and made minor stylistic changes.

20-22-604. Penalties.

(a) The Arkansas Fire Protection Licensing Board, in a lawful proceeding respecting licensing as defined in the Arkansas Administrative Procedures Act, § 25-15-201 et seq., in addition to or in lieu of any other lawful disciplinary action, may assess a civil penalty of not more than one thousand dollars ($1,000) for each violation of any statute, rule, or order enforceable by the board.

(b) In addition to the penalties under subsection (a) of this section, the board also may take action against any firm or individual by suspending or revoking the firm's or individual's license, placing the firm or individual on probation, or refusing to issue new or renewal licenses or certificates.

(c) The board may require a firm to pay all necessary and proper costs incurred by the board in the preparation, conduct, and findings of a hearing involving correcting the action or work performed in violation of a statute, rule, or order enforceable by the board.

History. Acts 1977, No. 743, § 15; A.S.A. 1947, § 82-846; Acts 1991, No. 392, § 2; 1993, No. 1215, § 3; 2009, No. 422, § 4; 2011, No. 838, § 2; 2011, No. 1121, § 7.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment by No. 838 inserted "the preparation, conduct, and findings of a hearing involving" in (c).

The 2011 amendment by No. 1121, in (a), deleted "may" following "Arkansas Fire Protection Licensing Board" and inserted "may" preceding "assess."

20-22-606. Arkansas Fire Protection Licensing Board — Creation — Members.

(a)(1) There is created the Arkansas Fire Protection Licensing Board, which shall be composed of eleven (11) members who are

residents of the state and who shall be appointed by the Governor for terms of five (5) years. The eleven (11) members shall be constituted as follows:

(A) One (1) member shall be an industrial safety representative;

(B) One (1) member shall be the State Fire Marshal;

(C) One (1) member shall be a representative of a state association of fire chiefs;

(D) One (1) member shall be a representative of the fire insurance industry;

(E) Two (2) members shall be representatives of large industrial users of fire suppression equipment;

(F) One (1) member shall be a representative of a restaurant association;

(G) Two (2) members shall be active in the installation and servicing of portable fire extinguishers or fixed fire protection systems; and

(H) Two (2) members shall be active in the installation and servicing of fire protection sprinkler systems.

(2) Each of the four (4) congressional districts in the state shall be represented by at least one (1) member.

(3) Each of the members shall be experienced and knowledgeable in one (1) or more of the following areas:

(A) The installation or servicing of:

(i) Portable fire extinguishers;

(ii) Fixed fire protection systems; and

(iii) Fire protection sprinkler systems;

(B) The manufacturing of fire suppression equipment;

(C) The fire insurance industry;

(D) The use of fire suppression equipment by the food service industry; or

(E) The provision of fire suppression services by a fire department.

(b) Each member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(c)(1) The board may expend moneys as necessary for stationery, office supplies, application forms, equipment, and other materials necessary for the board to carry out its duties.

(2) The expense reimbursement and stipends authorized by § 25-16-901 et seq. and the expense for necessary office supplies, forms, equipment, and other necessary materials shall be paid from the fees and fines collected by the board.

(d)(1) The board shall employ an executive director, chief board investigator, and other staff as necessary whose compensation shall be set by the board.

(2) The staff shall be paid from fees and fines collected by the board.

History. Acts 1977, No. 743, §§ 3, 6; 1979, No. 543, § 1; 1983, No. 660, § 1; 1983, No. 782, § 6; 1985, No. 702, § 3; A.S.A. 1947, §§ 82-834 — 82-834.3, 82-837; Acts 1991, No. 392, § 3; 1993, No. 1215, § 4; 1997, No. 250, § 194; 2009, No. 422, § 5.

Amendments. The 2009 amendment

rewrote (a); in (c), inserted "equipment" in (c)(1), and in (c)(2), substituted "the expense for necessary office supplies, forms, equipment, and other necessary materials" for "miscellaneous office supplies" and inserted "and fines"; rewrote (d), which read: "The secretaryof the board shall receive additional salary as may be fixed by the board"; and made related and minor stylistic changes.

20-22-607. Arkansas Fire Protection Licensing Board — Powers and duties.

The Arkansas Fire Protection Licensing Board shall:

(1) Formulate and administer policies as may be determined necessary for the protection and preservation of life and property in regard to:

(A) The registration of firms engaging in the business of installing, inspecting, or servicing portable fire extinguishers and of firms engaging or in the business of installing, inspecting, and servicing fixed fire protection systems;

(B) The registration of firms engaging in the business of hydrostatic testing of portable fire extinguishers. However, no person or firm shall be granted a Class A hydrostatic testing certificate until the applicant submits proof satisfactory to the board that the test equipment of the applicant has been tested and certified by the United States Department of Transportation;

(C) The examination and licensure of persons applying for a license to install, inspect, or service portable fire extinguishers and of a person applying for a license to install, inspect, or service fixed fire protection systems;

(D) The registration of firms engaging in the business of selling, system layout, installing, servicing, inspecting, or any aspect of fire protection sprinkler systems, including standpipe, fire pumps, and hose systems;

(E) The examination and licensure of a person applying for a license as a responsible managing employee for the purpose of fire protection sprinkler system business, including designing, inspecting, installing, system layout, or servicing fire protection sprinkler systems, including standpipe, fire pumps, and hose systems;

(F) The examination and licensure of a person applying for a license as a fire protection sprinkler systems inspector for the purpose of servicing or inspecting fire protection sprinkler systems, including standpipe, fire pumps, and hose systems; and

(G) The examination and licensure of a person applying for a license as a fire protection sprinkler system sprinkler fitter or apprentice for the purpose of installing, servicing, or placing fire protection sprinkler systems in service, including without limitation standpipe, fire pumps, and hose systems;

(2) Establish reasonable qualifications for firms and individuals for the issuance of a certificate of registration or individual license to engage in any aspect of the business of portable fire extinguishers, fixed fire protection systems, or fire protection sprinkler systems;

(3) Conduct examinations to ascertain the qualifications and fitness of individual applicants to install or service portable fire extinguishers, install or service fixed fire protection systems, or install, service, inspect, or design fire protection sprinkler systems;

(4) Issue certificates of registration for those firms that qualify and individual licenses and permits to individuals that qualify to engage in the business and activity of installing and servicing portable fire extinguishers, installing and servicing fixed fire protection systems, and designing, installing, inspecting, or servicing fire protection sprinkler systems and issue licenses or permits to those firms and individuals qualifying to perform hydrostatic testing of fire extinguisher cylinders;

(5) Evaluate the qualifications of firms seeking approval as testing laboratories for portable fire extinguishers; and

(6)(A) Regulate and license as a part of a fire protection sprinkler system the installation, service, and maintenance of a standpipe and hose system as defined under the National Fire Protection Association pamphlet number fourteen (No. 14).

(B)(i) The installation, service, and maintenance of a standpipe and hose system shall be performed by a licensed fire protection sprinkler contractor. A licensed fire protection sprinkler contractor is not required to perform hydrostatic testing of the standpipe hose, repair of the standpipe hose, or maintenance of the standpipe hose.

(ii) The standpipe and hose system shall be:

(a) Designed, installed, and tested in accordance with the standards adopted in the "Rules and Regulations Applicable to Fire Protection Sprinkler Systems" of the board and in accordance with the applicable National Fire Protection Association pamphlets; and

(b) Designed by an Arkansas-licensed responsible managing employee or a registered professional engineer licensed by the State of Arkansas.

History. Acts 1977, No. 743, § 11; 1983, No. 782, § 13; 1985, No. 702, § 9; A.S.A. 1947, § 82-842; Acts 1993, No. 1215, § 5; 1999, No. 1287, § 2; 2003, No. 1074, § 3; 2009, No. 422, § 7 [6]; 2011, No. 838, § 3.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment inserted "inspecting" or variant throughout the section; inserted "fire pumps" in (1)(D), (1)(E), and (1)(F); inserted "selling, system layout" in (1)(D); in (1)(E), inserted "fire protection sprinkler system business, including" and "system layout"; deleted "installing" preceding "servicing" in (1)(F); and added (1)(G).

20-22-608. State Fire Marshal — Powers and duties.

The State Fire Marshal shall advise and assist the Arkansas Fire Protection Licensing Board in the adoption of policies and procedures for the effective monitoring of the sale, installation, and servicing of portable fire extinguishers, the sale, installation, and servicing of fixed fire protection systems, and the design, installation, inspection, servic-

ing, and maintenance of fire protection sprinkler systems, including standpipe and hose systems, and for the registration and licensing of firms and individuals providing these goods and services.

History. Acts 1977, No. 743, § 4; 1985, No. 702, § 4; A.S.A. 1947, § 82-835; Acts 1987, No. 532, § 3; 2009, No. 422, § 8 [7].

Amendments. The 2009 amendment substituted "the sale, installation, and servicing of fixed fire protection systems, and the design, installation, inspection, servicing, and maintenance of" for "fixed fire extinguisher systems, and," inserted "including standpipe and hose systems," and made related and minor stylistic changes.

20-22-609. License, permit, or certificate required — Compliance with subchapter — Penalties.

Except as provided in §§ 20-22-603 and 20-22-613, no person may do any of the following:

(1) Engage in the business of installing, inspecting, or servicing portable fire extinguishers without a current certificate of registration;

(2) Engage in the business of installing, inspecting, or servicing fixed fire protection systems without a current certificate of registration;

(3) Install, inspect, or service portable fire extinguishers or fixed fire protection systems without a current individual license;

(4) Perform hydrostatic testing of any portable fire extinguisher or any fire extinguisher system cylinder without a current hydrostatic testing certificate;

(5) Obtain or attempt to obtain a certificate of registration or individual license by fraudulent representation, fraudulent examination or testing, misconduct, or irregularity;

(6) Sell, service, inspect, or install portable fire extinguishers, fixed fire protection systems, or fire protection sprinkler systems contrary to this subchapter or the policies formulated and administered under the authority of this subchapter;

(7) Engage in any fire protection sprinkler system business without a current certificate of registration and without employing a full-time licensed responsible managing employee; and

(8) Engage in any business or activity licensed or permitted by the Arkansas Fire Protection Licensing Board without maintaining in force at all times a public liability insurance policy, with minimum coverage limits as set by the board, covering the person's operations and completed operations.

History. Acts 1977, No. 743, §§ 10, 12; 1981, No. 404, § 1; 1985, No. 702, §§ 10, 11; A.S.A. 1947, §§ 82-841, 82-843; Acts 1987, No. 532, § 6; 1993, No. 1215, § 6; 1999, No. 1287, § 3; 2009, No. 422, § 9 [8]; 2011, No. 838, § 4.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment inserted "inspecting" or variant throughout the section; inserted "protection" in (7); and deleted former (8) and redesignated the following subdivision accordingly.

20-22-610. License, permit, or certificate — Application — Fees.

(a) Applications for licenses, permits, and certificates provided for in this section shall be made under policies adopted by the Arkansas Fire Protection Licensing Board and shall be submitted on forms prescribed by the board.

(b)(1) Each firm or person desiring to engage in or to continue to engage in the business of installing, inspecting, or servicing portable fire extinguishers, selling, inspecting, installing, or servicing fixed fire protection systems, performing hydrostatic testing of fire extinguishers or fire extinguisher cylinders, or planning, selling, installing, maintaining, inspecting, or servicing fire protection sprinkler systems in the State of Arkansas as a condition of engaging or continuing to engage in such a business shall obtain from the board a certificate of registration and appropriate individual licenses as prescribed in this subchapter.

(2) Each firm engaged in the business of installing or servicing portable fire extinguishers or selling, installing, inspecting, or servicing fixed fire protection systems shall obtain a certificate of registration and shall pay the following fees:

(A) For engaging in the business of inspecting, installing, or servicing portable fire extinguishers, the fee for the initial certificate of registration shall be no more than five hundred dollars ($500), and the annual renewal fee shall be no more than five hundred dollars ($500); and

(B) For engaging in the business of selling, installing, inspecting, or servicing fixed fire protection systems, the fee for the initial certificate of registration shall be no more than five hundred dollars ($500), and the annual renewal fee shall be no more than five hundred dollars ($500).

(3) Each employee of a registered firm who engages in installing, inspecting, or servicing portable fire extinguishers or selling, installing, inspecting, or servicing fixed fire protection systems, other than an apprentice, shall obtain an individual license and pay the following fees:

(A) For a license to install, inspect, or service portable fire extinguishers, an initial fee of no more than one hundred dollars ($100), and for each annual renewal thereof a fee of no more than fifty dollars ($50.00); and

(B) For a license to sell, install, inspect, or service fixed fire protection systems, an initial fee of no more than one hundred dollars ($100), and an annual renewal fee of no more than fifty dollars ($50.00).

(4) Each firm performing hydrostatic testing of United States Department of Transportation specification compressed gas cylinders used for or with portable fire extinguishers or for or with fixed fire protection systems, as a condition of engaging in such a business, shall obtain a Class A hydrostatic testing certificate for which the initial fee shall be no more than two hundred dollars ($200), and an annual renewal fee shall be no more than one hundred dollars ($100).

(5) Each firm performing hydrostatic testing of pressure vessels used for or with portable fire extinguishers or for or with fixed fire protection systems, other than United States Department of Transportation specification compressed gas cylinders, shall obtain a Class B hydrostatic testing certificate as a condition of engaging in such a business, for which the initial fee shall be no more than one hundred dollars ($100), and an annual renewal fee shall be no more than fifty dollars ($50.00).

(6)(A) An employee of a registered firm who has been issued an apprentice permit may service, inspect, and install fire protection sprinkler systems, portable fire extinguishers, and fixed fire protection systems under the direct supervision of a licensed employee subject to rules promulgated by the board.

(B) Each application for an apprentice permit shall be:

(i) Made by a registered firm; and

(ii) Accompanied by a fee of no more than thirty dollars ($30.00).

(C) A copy of the application may be used by the applicant as proof of a temporary permit until the official apprentice permit is issued or denied by the board.

(D) A copy of the application or the apprentice permit is valid for one (1) year from the date of issue and is not renewable.

(7)(A) Each employee of a registered firm desiring to take an examination in order to obtain a license as required in this subchapter shall apply to the board and pay an initial testing fee of no less than thirty dollars ($30.00) per examination nor more than one hundred dollars ($100) per examination.

(B) Testing fees are to be paid each separate time an examination or series of examinations is taken.

(8) Each firm engaged in a fire protection sprinkler business in the state shall obtain a certificate of registration and shall pay the following fees:

(A) An initial application fee not to exceed one hundred dollars ($100) for the certificate of registration; and

(B) A fee not to exceed one thousand dollars ($1,000) for the issuance of either the initial certificate of registration or any annual renewal of the certificate of registration.

(9) Each firm holding a certificate of registration for a fire protection sprinkler system business shall at all times employ at least one (1) responsible managing employee who must obtain a license issued by the board after successful completion of the requirements in this subchapter and under the rules of the board, including without limitation the passage of examinations, and by payment of fees established by rule of the board subject to the following limitations:

(A) An examination fee not to exceed two hundred dollars ($200) per examination to be paid each time an examination is taken for any individual license issued by the board; and

(B) A license fee not to exceed five hundred dollars ($500) shall be paid for issuance of the initial license and each annual renewal thereof for any individual license issued by the board.

History. Acts 1977, No. 743, §§ 5, 10; 1983, No. 782, § 5; 1985, No. 702, § 5; A.S.A. 1947, §§ 82-836, 82-841; Acts 1993, No. 1215, § 7; 1999, No. 1287, § 4; 2009, No. 422, § 10 [9]; 2011, No. 838, § 5.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment inserted "inspect" or variant throughout the section; in (b)(6)(A), deleted "sell" preceding "service," inserted "fire protection sprinkler systems," and added "subject to rules promulgated by the board"; deleted "except a license for fire protection sprinkler systems" following "this subchapter" in (b)(7)(A); in (b)(9), inserted "including without limitation the passage of examinations" and added "established by rule of the board subject to the following limitations"; and added "for any individual license issued by the board" in (b)(9)(A) and (b)(9)(B).

20-22-611. License, permit, or certificate — Qualifications.

(a) For a license to install or service portable fire extinguishers, for a license to sell, install, or service fixed fire protection systems, or for a license to conduct any fire protection sprinkler system business, a person employed by a certified firm shall obtain a license issued by the Arkansas Fire Protection Licensing Board after:

(1) Successful completion of the requirements for licensure under rules of the board; and

(2) Payment of fees established under rules of the board.

(b) A firm shall:

(1) Maintain in force at all times while licensed a public liability insurance policy covering its operations and completed operations with a minimum limit of liability of one million dollars ($1,000,000) per occurrence for bodily injury and one hundred thousand dollars ($100,000) per occurrence for property damage or a single limit of liability for bodily injury and property damage of one million dollars ($1,000,000) per occurrence; and

(2) File a current certificate of insurance to be maintained with the board.

History. Acts 1977, No. 743, § 7; 1979, No. 862, § 2; 1983, No. 782, § 7; 1985, No. 702, § 6; A.S.A. 1947, § 82-838; Acts 1993, No. 1215, § 8; 1999, No. 1287, § 5; 2009, No. 422, § 11 [10]; 2011, No. 838, § 6; 2011, No. 1121, § 8.

Amendments. The 2009 amendment rewrote the section.

The 2011 amendment by No. 838 rewrote (a).

The 2011 amendment by No. 1121 substituted "File a current certificate of insurance to be maintained" for "A current certificate of insurance shall be filed and maintained" in (b)(2).

20-22-612. License, permit, or certificate — Previously engaged persons.

Notwithstanding the provisions of this subchapter, if any person or firm engaged in the business on January 1, 1977, of servicing portable fire extinguishers, installing or servicing fixed fire protection systems, or performing hydrostatic testing of fire extinguishers derived twenty-five percent (25%) or more of the personal or firm income from servicing portable fire extinguishers or installing or servicing fixed fire protection systems or hydrostatic testing of fire extinguishers during the 1976

calendar year, the person or firm shall be registered or issued a license to continue in the business upon payment of the annual registration or license fee prescribed in this subchapter for the particular type of business, if the applicant's qualifications meet those requirements established by the Arkansas Fire Protection Licensing Board.

History. Acts 1977, No. 743, § 14; A.S.A. 1947, § 82-845; Acts 2009, No. 422, § 12 [11].

Amendments. The 2009 amendment substituted "protection systems" for "extinguishers" in two places, and made minor stylistic changes.

20-22-613. Actions.

(a) No portable fire extinguisher or fixed fire protection system may be sold or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory approved by the Arkansas Fire Protection Licensing Board.

(b) No soda acid or foam acid type fire extinguisher shall be sold or offered for sale in this state.

(c) Every person or firm servicing any portable fire extinguisher in this state shall service the portable fire extinguisher under the standards and procedures prescribed in the rules of the board.

(d) Every person installing or servicing a portable fire extinguisher, a fixed fire protection system, or a fire protection sprinkler system in this state shall affix a tag thereto showing the name of the person and firm selling, installing, or servicing the portable fire extinguisher, fixed fire protection system, or fire protection sprinkler system and the date of the installation or service.

(e) The sale, servicing, or recharging of carbon tetrachloride fire extinguishers in this state is prohibited.

(f) Except as provided in § 20-22-603, only the holder of a current and valid license or an apprentice permit issued under this subchapter may service portable fire extinguishers, install and maintain fixed fire protection systems, or install or maintain fire protection sprinkler systems.

(g) A person who has been issued a license or permit under this subchapter to service portable fire extinguishers, install or service fixed fire protection systems, or to install and service fire protection sprinkler systems must be an employee, agent, or servant of a firm that holds a current and valid certificate of registration issued under this subchapter.

(h) Installation and servicing of fixed fire protection systems shall be accomplished under the rules of the board.

(i) Installation and servicing of fire protection sprinkler systems shall be accomplished in accordance with the rules of the board.

(j)(1) Any fire protection sprinkler system that was installed prior to September 1, 1985 must be serviced, maintained, inspected, and repaired under current rules of the board.

(2) Any fixed fire protection system that was installed before January 1, 1979, shall be serviced, maintained, inspected, and repaired under current rules of the board.

History. Acts 1977, No. 743, § 8; 1979, No. 862, § 3; 1983, No. 782, §§ 8-10; 1985, No. 702, § 7; A.S.A. 1947, § 82-839; Acts 1987, No. 532, § 4; 2009, No. 422, § 13 [12].

Amendments. The 2009 amendment rewrote the section.

20-22-614. [Repealed.]

Publisher's Notes. This section, concerning service and repair of fixed fire extinguisher systems, was repealed by Acts 2009, No. 422, § 13. The section was derived from Acts 1979, No. 100, § 1; A.S.A. 1947, § 82-839.1.

Subchapter 7 — Fireworks

SECTION.
20-22-702. Public displays excepted.
20-22-707. License — Application and issuance.
20-22-710. Location, display, sale, etc.

20-22-702. Public displays excepted.

(a) Nothing in this subchapter shall be construed as applying to the shipping, sale, possession, and use of fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules and regulations promulgated by the Director of the Department of Arkansas State Police. Such items of fireworks which are to be used for public display only and which are otherwise prohibited for sale and use within the state shall include display shells designed to be fired from mortars and display set pieces of fireworks classified by the regulations of the Interstate Commerce Commission as Class B special fireworks and shall not include such items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs, and torpedoes.

(b)(1) Public displays shall be performed only under competent supervision and after the persons or organizations making the displays have applied for and received a permit for the displays issued by the director.

(2) Applications for permits for public displays shall be made in writing at least five (5) days in advance of the proposed display, and the application shall show that the proposed display is to be so located and supervised that it shall not be hazardous to life, limb, or property.

(3) If the display is to be performed within the limits of a municipality, the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire and police departments of the municipality.

(c)(1) Permits issued shall be limited to the time specified therein and shall not be transferable.

(2) Only licensed distributors who are licensed importers or who purchase from licensed importers may possess special fireworks for resale to holders of a permit for a public fireworks display.

(d)(1) The Department of Arkansas State Police may charge a fee not to exceed fifty dollars ($50.00) for each permit issued under this section.

(2) The total fee for all permits issued during a school year to an educational institution that provides instruction for grades kindergarten through twelve (K-12) shall not exceed twenty-five dollars ($25.00).

(3) All permit fees shall be remitted to the department and shall be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund.

History. Acts 1961, No. 224, § 6; 1985, No. 1040, § 1; A.S.A. 1947, § 82-1706; Acts 2005, No. 2204, § 2; 2009, No. 240, § 1.

A.C.R.C. Notes. The Interstate Commerce Commission, referred to in this section, was abolished by the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88. The successor agency to the Interstate Commerce Commission is the Surface Transportation Board.

Amendments. The 2009 amendment substituted "five (5) days" for "two (2) days" in (b)(2).

20-22-707. License — Application and issuance.

(a)(1) To engage in the sale of fireworks as a manufacturer, importer, distributor, wholesale jobber, retailer, or shooter, an applicant shall submit to the Director of the Department of Arkansas State Police an application on a form provided by the director before April 1 of each year setting forth such facts and information as the director may determine necessary and proper, considering the requirements of public health, safety, and welfare. The license for manufacturers, importers, distributors, wholesale jobbers, and retailers shall be effective from and shall date from May 1 of the year of issuance. The license for manufacturers, importers, distributors, wholesale jobbers, and retailers shall be valid through April 30 of the following year. The license for shooters shall be valid for five (5) years from the date of issuance. Upon approval of the application by the director and before the issuance of the license therefor, the applicant shall pay to the director a license fee for each type of business conducted to the following schedule:

(A) Manufacturer $1,000.00
(B) Importer 750.00
(C) Distributor 500.00
(D) Jobber wholesaler 100.00
(E) Retailer 25.00
(F)(i) Shooter 50.00

(ii) This fee for shooters shall be waived if the applicant verifies that the applicant is a professional or volunteer firefighter.

(2)(A) However, retailers may purchase their licenses from their vendors, which include importers, distributors, or jobber wholesalers. The retailers' licenses shall be made available by the Department of Arkansas State Police to the vendors in books of twenty (20) licenses

to a book. The vendors shall record the sales of the licenses to retailers and submit their records to the director semiannually on January 31 and July 31 of each year. Each semiannual report shall cover the preceding six-month period.

(B) Vendors may secure a refund of the fees paid for retailer licenses which are not sold by the vendor.

(C) Failure to obtain the permit shall be deemed a violation of this subchapter.

(b)(1) Renewal of outstanding licenses to engage in the sale of fireworks as a manufacturer, importer, distributor, jobber, retailer, or shooter shall be made effective by payment of the fee, as set forth in subsection (a) of this section, to the director on or before May 1 of each year.

(2) License renewal applications postmarked after May 1 of each year shall be assessed a late penalty in an amount equal to two (2) times the renewal fee, as set forth in subsection (a) of this section.

(3) An initial application postmarked after April 1 shall be assessed a late penalty in an amount equal to two (2) times the license fee, as set forth in this section.

(c) All funds collected under this subchapter by the director, including license fees and penalties, shall be deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund.

(d) The director shall assign a license number to each license issued. This number shall be affixed by the person to whom such a license is issued to all invoices issued or used by each manufacturer, importer, distributor, or jobber.

(e)(1) It shall be unlawful for a jobber licensed under this subchapter or for an Arkansas-domiciled retailer to purchase fireworks from a distributor, importer, or manufacturer domiciled outside the State of Arkansas unless the distributor, manufacturer, or importer can show proof that the distributor, manufacturer, or importer holds a valid license under this subchapter to perform functions of the distributor, importer, or manufacturer, or all of them, as the case may be.

(2) In the event of a violation of this section, if the distributor, importer, or manufacturer cannot show valid proof of being properly and currently licensed under this subchapter and if purchase of fireworks is consummated by a wholesale jobber licensed under this subchapter or by an Arkansas retailer from the distributor, importer, or manufacturer, then the jobber or retailer shall become liable, as a civil penalty, for the full amount of the license fee required by this subchapter from the distributor, importer, or manufacturer. The amount of the license fee is payable immediately, or in the event of failure to pay the penalty within thirty (30) days of the violation, the distributor, importer, or manufacturer shall be subject to the criminal penalties provided by this subchapter.

(3) Furthermore, unless the out-of-state distributor, importer, or manufacturer pays the license fee required under the provisions of this subchapter within a period of thirty (30) days after being so notified by

registered mail, the person shall thereafter be prohibited from engaging in the business defined in this subchapter in the State of Arkansas.

(f)(1) No permit or license provided for in this subchapter shall be transferable, nor shall a person be permitted to operate under a permit or license issued to any other person.

(2) No permit or license shall be issued to a person under twenty-one (21) years of age.

(3)(A) Each retailer and holder of a license under the provisions of this subchapter shall keep an accurate record of each shipment received.

(B) Each distributor, importer, jobber, or wholesaler shall keep a record of each shipment received and each sale, delivery, or out-shipment of fireworks.

(C) The records shall be clear, legible, and accurate, showing the name and address of the seller or purchaser, item, and quantity received or sold.

(D) The records are to be kept at each place of business and shall be subject to examination by the director or his or her agents who shall have the authority at any time to require any manufacturer, importer, distributor, wholesaler, jobber, or retailer to produce records for the current year and the immediately preceding full license year.

(E) Each shooter shall keep a record of the date, location, and type of display conducted within the State of Arkansas.

(g) Mail-order sales of fireworks to consumers through any medium of interstate or intrastate commerce are prohibited. Sales of fireworks to consumers may be made only at properly licensed retail locations within the State of Arkansas. Any person violating this subsection shall be guilty of a Class C misdemeanor.

(h) The director may revoke or deny an application for any license or permit at any time for violating any provision of this subchapter or for falsifying any information provided to the department as part of an application for a license or permit.

(i) The director may promulgate rules necessary to enforce this subchapter.

History. Acts 1961, No. 224, § 8; 1977, No. 379, § 2; 1977, No. 504, §§ 1-4; 1985, No. 278, § 1; 1985, No. 1041, § 2; A.S.A. 1947, § 82-1708; Acts 1991, No. 677, § 1; 2005, No. 2204, § 4; 2009, No. 241, § 1.

Amendments. The 2009 amendment, in (a) substituted the fourth sentence for the former fourth and fifth sentences in (a)(1), which read: "The license for shooters shall be effective from and shall date from May 1 of the year of issuance. The license for shooters shall be valid through April 30 of the following fifth year," and deleted "may exchange unsold licenses for current licenses at no charge to them or" following "Vendors" in (a)(2)(B)

20-22-710. Location, display, sale, etc.

(a) The placing, storing, locating, or displaying of fireworks in any window where the sun may shine through glass on to the fireworks so displayed or to permit the presence of lighted cigars, cigarettes, or pipes

within ten feet (10') of where the fireworks are offered for sale is declared unlawful and prohibited.

(b) At all places where fireworks are stored or sold, there shall be posted signs with the words "FIREWORKS — NO SMOKING" in letters not less than four inches (4") high at each entrance to the retail sales area.

(c)(1) No fireworks are to be sold at retail at any location where paints, oils, or varnishes are kept for use or sale, unless the paints, oils, and varnishes are kept in the original unbroken containers, nor where resin, turpentine, gasoline, or other inflammable substance that may generate inflammable vapors is used, stored, or sold.

(2) Consumer fireworks retail sales facilities and stores shall not be located within fifty feet (50') of the following:

(A) Motor vehicle fuel dispensing station dispensers;

(B) Retail propane dispensing station dispensers;

(C) Above-ground storage tanks for flammable or combustible liquids;

(D) Flammable gases or flammable liquefied gases; or

(E) Compressed natural gas dispensing facilities.

(d) All firework devices that are readily accessible to handling by a consumer or purchaser shall have their fuses protected in such a manner as to protect against accidental ignition of an item by spark, cigarette ash, or other ignition source. Safety type thread wrapped and coated fuses are exempt from this section.

(e) All licensees under this subchapter shall have a fire extinguisher of a type approved by the Director of the Department of Arkansas State Police in an area readily accessible to any point of storage or sale of fireworks. In lieu of such an extinguisher, retailers may maintain a common type of water hose, charged and connected to a water system, which is readily available to any area where fireworks are stored or sold.

History. Acts 1961, No. 224, § 4; 1985, No. 1041, § 1; A.S.A. 1947, § 82-1704; Acts 2009, No. 239, § 1.

Amendments. The 2009 amendment inserted "at each entrance to the retail sales area" in (b); inserted (c)(2) and redesignated the remaining text accordingly; and made minor stylistic changes.

Subchapter 8 — Fire Protection Services

SECTION.
20-22-806. Certification and classification of fire departments.

SECTION.
20-22-809. Workers' compensation.

A.C.R.C. Notes. Acts 2009, No. 808, provided: "WHEREAS, the General Assembly encourages the Arkansas Fire Training Academy to make every effort to provide sixteen-hour training courses to effectuate the purposes of this Act."

20-22-806. Certification and classification of fire departments.

(a) Fire departments in this state may apply for annual certification and classification by the Director of the Office of Fire Protection Services. Each fire department applying for certification shall submit such information as may be required by the director to determine whether the fire department meets minimum certification standards and to classify the department as to its level of service.

(b)(1) Certification standards for fire departments shall not be changed unless the changes are approved by the Arkansas Fire Protection Services Board.

(2) Any change to the certification standards under this subsection shall not be effective until twelve (12) months after the adoption of the published change.

(c)(1) Firefighters shall maintain a minimum of sixteen (16) hours per year of certifiable training meeting the standards of the Arkansas Fire Training Academy.

(2) A firefighter who receives more certified hours than required in subdivision (c)(1) of this section in a year may carry over the additional certified hours to the next year only.

(d) Firefighters shall also receive within the first year of service as a firefighter:

(1) Up to sixteen (16) hours in the Introduction to Firefighting course;

(2) Up to sixteen (16) hours in the Personal Protective Equipment course; and

(3) Up to eight (8) hours in the Wildland Fire Suppression course.

(e)(1) A member of a fire department who does not engage in firefighting is exempt from the requirements of this section.

(2) A member under subdivision (e)(1) of this section shall be eligible for workers' compensation coverage under § 20-22-809.

(3) A member under subdivision (e)(1) of this section is considered a firefighter for the purpose of number of members of the fire department.

(f) A fire department that complies with this section is eligible for insurance premium tax moneys under § 14-284-401 et seq.

History. Acts 1987, No. 837, § 5; 2007, No. 362, § 1; 2009, No. 808, § 1.

Amendments. The 2007 amendment, in (b)(1), substituted "Certification standards for fire departments shall not be changed unless the changes are approved by the" for "Until the" and deleted "adopts certification standards, any fire department shall be entitle to certification upon registering with the board" following "Board"; in (b)(2), substituted "Any change to the certification standards" for "Certification", inserted "not", substituted "twelve (12) months" for "six (6) months" and substituted "published change" for "certification standards by the board"; deleted "a minimum of six (6) hours per quarter and at least" following "maintain" in (c); and added (d).

The 2009 amendment, in (c), inserted (c)(2), redesignated the existing text of (c) accordingly, and substituted "sixteen (16)" for "twenty-four (24)" in (c)(1); and added (e) and (f).

20-22-809. Workers' compensation.

(a) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, volunteer firefighters of certified fire departments, other than municipal fire departments, who meet the requirements of this section are county employees and shall receive minimum compensation. Their survivors shall receive death benefits in the same manner as regular county employees for injury or death arising out of and in the course of their activities as firefighters.

(b) Volunteer firefighters requesting workers' compensation coverage shall annually file with the county clerk evidence that:

(1) The firefighter has met the minimum training standards recommended by the Arkansas Fire Protection Services Board; and

(2) The volunteer firefighter is a member of a certified fire department other than a municipal fire department.

(c) A member of a fire department under § 20-22-806 who does not engage in firefighting is eligible for workers' compensation under this section.

History. Acts 1987, No. 837, § 8; 2009, No. 808, § 2.

Amendments. The 2009 amendment made a minor stylistic change in (a), and added (c).

Subchapter 9 — Volunteer Fire Departments

SECTION.

20-22-901. Duty to respond to fires.

20-22-901. Duty to respond to fires.

(a)(1) Upon receipt of a report of an uncontrolled fire or a 911 or other emergency call reporting a fire, it shall be the duty of volunteer fire departments operating within the State of Arkansas to respond to, attempt to control, and put out all fires occurring within their respective districts involving any real or personal property, whether that property is owned by members of the fire district.

(2) However, unless the following circumstances exist, the volunteer fire department shall have no duty or authority to respond to or attempt to control and put out any fire that occurs on forest lands, cut-over lands, brush lands, or grasslands owned by a nonmember:

(A) The fire poses an immediate threat to life of any person;

(B) There is a written agreement between a nonmember owner of the real or personal property and the volunteer fire department requiring the fire department to respond;

(C) The fire is in violation of a countywide fire ban; or

(D) The fire poses an immediate threat to the real or personal property owned by a member of the district.

(b)(1)(A) If the property is owned by a nonmember of the fire district, the volunteer fire department may recover from the nonmember property owner the reasonable value of its services.

(B) Recovery under subdivision (b)(1)(A) of this section shall not exceed the fair market value of the services rendered.

(2)(A) A claim for services in responding to a fire involving only personal property shall be allowed only for personal property of nonmembers.

(B) The claimed amount under subdivision (b)(2)(A) of this section shall not exceed eight hundred dollars ($800).

History. Acts 1987, No. 836, § 1; 1997, No. 1150, § 1; 2003, No. 655, § 1; 2007, No. 581, § 1; 2009, No. 952, § 6; 2009, No. 1482, § 1.

Amendments. The 2007 amendment substituted "five hundred dollars ($500)" for "three hundred dollars ($300)" in (b)(2).

The 2009 amendment by No. 952 subdivided (b)(1) and (b)(2), inserted "Recovery under subdivision (b)(1)(A) of this section" in (b)(1)(B), inserted "under subdivision (b)(2)(A) of this section" in (b)(2)(B), and made related and minor stylistic changes.

The 2009 amendment by No. 1482 substituted eight hundred dollars ($800)" for "five hundred dollars ($500)" in (b)(2).

CHAPTER 24

ELEVATORS, DUMBWAITERS, AND ESCALATORS

SECTION.

20-24-105. Elevator Safety Board — Creation — Members.

20-24-105. Elevator Safety Board — Creation — Members.

(a) There is created the Elevator Safety Board, consisting of six (6) members, one (1) of whom shall be the Director of the Department of Labor, who shall serve continuously, and five (5) of whom shall be appointed by the Governor for terms of four (4) years.

(b) Upon the death, resignation, or incapacity of any member, the Governor shall fill the vacancy, for the remainder of the unexpired term, with a representative of the same interests as those of his or her predecessor.

(c) Of the five (5) members appointed by the Governor:

(1) One (1) shall be a representative of the owners and lessees of elevators within this state;

(2) One (1) shall be a representative of the manufacturers of elevators used within this state;

(3) One (1) shall be a representative of an insurance company authorized to insure the operation of elevators in this state;

(4) One (1) shall be a representative of the public at large; and

(5) One (1) shall be selected from a list of persons recommended by the board of trustees of the Elevator Industry Work Preservation Fund.

(d) The board shall meet at the call of the director who shall designate in the call the time and place of the meeting.

(e) The members except the director may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1963, No. 189, § 2; A.S.A. 1947, § 82-1802; Acts 1997, No. 250, § 197; 2007, No. 1000, § 1.

Amendments. The 2007 amendment, in (a), substituted "six (6)" for "five (5)" and "five (5)" for "four (4)"; in (c), substituted "five (5) members appointed by the Governor" for "four (4) appointed members"; added (c)(5); and made related changes.

20-24-106. Elevator Safety Board — Powers and duties.

CASE NOTES

Variances.

Warehouse owner failed to present any evidence regarding the cost of bringing the elevator up to code, the cost of a new elevator, or the value of the warehouse property, and thus, the Arkansas Elevator Safety Board properly found that the elevator was not reasonably safe; the Board did not err in conditioning its approval for the owner's variance upon correcting the eleven code violations under subsection (d) of this section. Nash v. Ark. Elevator Safety Bd., 370 Ark. 345, 259 S.W.3d 421 (2007).

20-24-112. Testing and inspection required.

CASE NOTES

Cited: Nash v. Ark. Elevator Safety Bd., 370 Ark. 345, 259 S.W.3d 421 (2007).

CHAPTER 25

ARKANSAS MANUFACTURED HOMES STANDARDS ACT

SECTION.
20-25-102. Definitions.
20-25-104. Penalties.
20-25-105. Arkansas Manufactured Home Commission — Creation — Members.
20-25-106. Arkansas Manufactured Home Commission — Powers and duties.
20-25-107. Administration by Director of the Arkansas Manufactured Home Commission.
20-25-108. Compliance with code required.
20-25-109. Label of compliance.
20-25-111. Reports.
20-25-113. Purchase agreement and consumer disclosure.

20-25-102. Definitions.

As used in this chapter:

(1) "Authorized representative" means any person or employee approved, certified, or hired by the Director of the Arkansas Manufactured Home Commission to perform inspection services;

(2) "Code" means standards adopted by the Arkansas Manufactured Home Commission;

(3) "Defect" means any defect in the performance, construction, components, or material of a manufactured home that renders the manufactured home or any part of the manufactured home unfit for the ordinary use for which the manufactured home was intended;

(4) "Director" means the Director of the Arkansas Manufactured Home Commission;

(5) "Federal standards" means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., and applicable regulations promulgated by the United States Department of Housing and Urban Development when and as adopted by the commission;

(6) "Installation" means work done to stabilize, support, or anchor a manufactured home or to join sections of a multisection manufactured home when any such work is governed by regulations adopted by the commission;

(7) "Installer" means a person, firm, or corporation not otherwise certified who is engaged in the business of installing manufactured homes for himself or herself or on behalf of any other person not certified under this chapter;

(8) "Label" means a label issued by the United States Department of Housing and Urban Development or its contract agency to be affixed onto the exterior of the manufactured home to assure compliance with the federal standards;

(9) "Manufacturer" means any person, firm, or corporation who manufactures manufactured or modular homes;

(10)(A) "Manufactured home" means a structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty square feet (320 sq. ft.) or more and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

(B) "Manufactured home" includes the plumbing, heating, air conditioning, and electrical systems contained therein.

(C) "Manufactured home" shall include any structure which meets all the requirements of this subdivision (10) except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the federal standards;

(11) "Modular home" means a factory-built structure:

(A) Produced in accordance with state or local construction codes and standards; and

(B) Designed to be used as a dwelling unit with a foundation when connected to the required utilities;

(12) "Person" means an individual, partnership, corporation, or other legal entity; and

(13) "Retailer" means any person in the business of accepting on consignment, buying for resale, selling, or exchanging manufactured or modular homes or offering them to the public for sale, exchange, or lease-purchase, whether for himself or herself or on behalf of any other person not certified as a retailer under this chapter.

History. Acts 1977, No. 419, § 2; 1981, No. 533, § 2; 1985, No. 314, § 1; A.S.A. 1947, § 82-3016; Acts 2001, No. 1067, § 1; 2005, No. 1235, § 1; 2007, No. 1010, § 1.

Amendments. The 2007 amendment, inserted "certified" in (1); rewrote (3); inserted (5) and (6) and redesignated the remaining subsections accordingly; substituted "(10)" for "(8)" in (10)(C); and made related changes.

20-25-104. Penalties.

(a) It shall be deemed a violation of this chapter:

(1) For any manufacturer or retailer of manufactured homes to fail to correct a code violation within a reasonable time, not to exceed ninety (90) days, of being ordered to do so in writing by an authorized representative of the Director of the Arkansas Manufactured Home Commission if the manufacturer or retailer manufactured or sold the manufactured home after March 14, 1977; or

(2) For any person to interfere with, obstruct, or hinder any authorized representative of the director in the performance of his or her duty. In seeking to determine whether a manufacturer or retailer has violated this chapter, the director shall have full authority to convene hearings and issue orders pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which is incorporated by reference.

(b) Any individual or director, officer, or agent of a corporation who knowingly violates this chapter in a manner that threatens the health or safety of any purchaser shall be deemed guilty of a misdemeanor. Upon conviction, the person shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than one (1) year, or both, for each violation.

(c)(1)(A) Whoever violates any provision of section 610 of Title VI of Pub. L. No. 93-383 or any regulation or final order issued pursuant to it shall be liable to the State of Arkansas for a civil penalty of not to exceed one thousand dollars ($1,000) for each violation.

(B) Each violation of a provision of section 610 of Title VI of Pub. L. No. 93-383 or any regulation or order issued pursuant to it shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby. However, the maximum civil penalty shall not exceed one million dollars ($1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

(2) Any individual or a director, officer, or agent of a corporation who knowingly violates section 610 of Title VI of Pub. L. No. 93-383 in a manner that threatens the health or safety of any purchaser shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one (1) year, or both.

(d)(1) If a manufactured home retailer or manufacturer violates any of the provisions of this chapter or any rules or regulations governing the manufactured home program, the retailer or manufacturer may be enjoined from selling any manufactured home until the retailer or manufacturer meets all the requirements of this chapter and rules and regulations promulgated pursuant to this chapter.

(2) If any manufactured home installer violates any provision of this chapter or any rule or regulation relating to the federal Manufactured Home Construction and Safety Standards, the installer shall be enjoined from installing manufactured homes until the violations are corrected.

(3) Whenever practicable, the director shall give notice to any person against whom an action for injunctive relief is contemplated and shall afford the person an opportunity to present his or her views, but the failure to give notice and afford an opportunity shall not preclude the granting of appropriate relief.

History. Acts 1977, No. 419, § 10; 1981, No. 533, § 10; 1983, No. 416, § 1; A.S.A. 1947, § 82-3024; Acts 2001, No. 1067, § 2; 2007, No. 827, § 166.

Amendments. The 2007 amendment substituted "knowingly" for "knowingly and willfully" in (b) and (c)(2); subdivided (c)(1) into (A) and (B); in (c)(1)(B), inserted "of Title VI of Pub. L. No. 93-383" and substituted "shall not exceed" for "may not exceed"; and made related and stylistic changes.

20-25-105. Arkansas Manufactured Home Commission — Creation — Members.

(a)(1) There is created the Arkansas Manufactured Home Commission consisting of ten (10) members. Members shall be appointed by the Governor, to be confirmed by the Senate, and appointments shall be made in such a manner as to result in at least one (1) member residing in each congressional district as the congressional districts now and hereafter exist. The members shall be representative of the following interests:

(A) Four (4) members shall be active in the manufactured home industry;

(B) Five (5) members shall be from the public at large; and

(C) One (1) member shall be sixty (60) years of age or older and represent the elderly. He or she shall not be actively engaged in or retired from the manufactured home industry.

(2) Appointments of those active in the manufactured home industry shall be made by the Governor from a list of three (3) names submitted to him or her by the Arkansas Manufactured Housing Association for each appointment.

(3) Each member shall be appointed for a five-year term, except that a person appointed to fill a vacancy shall serve only the unexpired portion of the term. Each member's term shall extend until his or her successor is appointed and qualified.

(4) The members shall not receive compensation for their services as members but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(5) Membership on the commission shall not constitute holding a public office, and no member shall be disqualified from holding any public office or employment by reason of membership on the commission, nor shall the member forfeit the office or employment by reason of

his or her appointment hereunder, notwithstanding any law to the contrary.

(b) A chair and vice chair shall be elected by the commission to serve two (2) years.

History. Acts 1977, No. 419, § 12; 1981, No. 533, § 12; 1983, No. 131, §§ 1-3, 5; 1983, No. 135, §§ 1-3, 5; 1983, No. 416, § 2; A.S.A. 1947, §§ 6-623 — 6-626, 82-3026; Acts 1993, No. 917, § 1; 1997, No. 250, § 198; 2007, No. 1010, § 2.

Amendments. The 2007 amendment, substituted "the manufactured home industry" for "the industry of manufactured homes" in (a)(1)(C); and substituted "Arkansas Manufactured Housing Association" for "trade association" in (a)(2).

20-25-106. Arkansas Manufactured Home Commission — Powers and duties.

(a)(1) The Arkansas Manufactured Home Commission by regulation shall set uniform, reasonable standards for the proper:

(A)(i) Initial installation of new manufactured homes installed in this state.

(ii) The installation standards under subdivision (a)(1)(A)(i) of this section shall equal or exceed installation standards promulgated under the federal standards; and

(B) Secondary installation of used manufactured homes installed in this state.

(2) The commission by regulation shall set the requirements for and require:

(A) Licensing and certification of manufacturers of manufactured homes or modular homes in this state and manufacturers of manufactured homes or modular homes in other states selling them in this state;

(B) Licensing and certification of any retailer, salesperson, and others engaged in the sale of manufactured homes or modular homes for sale in this state; and

(C) Licensing, training, and certification of any installer engaged in the installation of manufactured homes or modular homes in this state.

(b) The commission shall require bonding or other reasonable methods to assure that manufacturers, retailers, installers, and others licensed or certified under this chapter will be financially responsible to fully comply with the code.

(c)(1) The commission shall by regulation establish procedures for the investigation and timely resolution of:

(A) Construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation of the home, including:

(i) Violations of the federal standards; and

(ii) Violations of the rules governing the installation of manufactured homes promulgated by the commission; and

(B) Disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for the correction or

repair of construction or installation defects in manufactured homes that are reported to the commission during the one-year period beginning on the date of installation of the home.

(2) The commission shall by regulation establish procedures for the timely inspection and certification of a percentage of the initial installations of new manufactured homes installed in the state on a sample basis to assure compliance with installation standards adopted by the commission and to comply with requirements set forth by the United States Department of Housing and Urban Development.

(3) The investigations, required corrections, and remedial actions shall be handled in accordance with the code or the regulations promulgated under the code.

(d)(1) The commission or subcommittee of the commission shall convene hearings and issue orders in cases of violations of this chapter or of the code or the regulations promulgated by the commission.

(2) The commission or subcommittee of the commission shall convene hearings, and the commission shall issue orders on appeals of determinations of responsibility for the correction of defects by manufacturers, retailers, and the Director of the Arkansas Manufactured Home Commission and his or her staff.

(e) The commission shall delegate its authority, except the authority to adopt standards, rules, and regulations, to the director.

(f) The commission shall have the power to suspend, revoke, or refuse to renew the license or certification under this chapter of any person who is found to have been guilty of:

(1) Fraud, misrepresentation, or deception in obtaining a license or certification;

(2) Accepting a manufactured or modular home, directly or indirectly, from a manufacturer not certified by the state pursuant to this chapter;

(3) Selling or delivering, directly or indirectly, a manufactured or modular home to a retailer not certified by the state pursuant to this chapter; or

(4) Violating any provision of this chapter or rules or regulations promulgated under this chapter.

(g)(1) In lieu of suspension, revocation, or refusal to renew a license certification, the commission shall have the authority to impose a monetary penalty and may suspend, refuse to renew, or revoke the license or certification until the penalty is paid to the commission. The penalty shall be imposed only if the commission formally finds that the public welfare would not be impaired by the imposition of a monetary penalty rather than suspension, refusal to renew, or revocation and that payment of the monetary penalty should achieve the desired disciplinary purpose.

(2) No monetary penalty imposed by the commission shall exceed one thousand dollars ($1,000) per violation. Each separate transaction shall constitute a separate violation.

(3) The commission shall not impose a civil penalty upon any person whose license or certification is suspended, revoked, or not renewed under this section.

(h) Regarding any violation of this chapter or the Arkansas Manufactured Home Recovery Act, § 20-29-101 et seq., the commission shall have the power to issue subpoenas and bring before the commission as a witness any person in the state and may require the witness to bring with him or her any book, writing, or other thing under his or her control which he or she is bound by law to produce in evidence.

(i) The commission shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service of the order assessing the monetary penalty unless a court enters a stay pursuant to this section.

(j) All hearings and appeals therefrom under this section shall be pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(k) The commission may require manufacturers, distributors, and retailers in this state to make reports as it deems necessary. The reports shall be filed with the director.

(l) No license or certification shall be transferred or assigned to any other person.

(m)(1)(A) The commission shall have the authority to file suit in the Pulaski County Circuit Court to enjoin any manufacturer, retailer, or installer from doing business in this state without having first secured the required license or certification, or both.

(B) The commission shall have the authority to collect from the manufacturer, retailer, or installer all fees and assessments which the commission would have collected had the manufacturer, retailer, or installer secured the required license or certification, or both.

(2) The commission shall have the authority to impose a monetary penalty not to exceed one thousand dollars ($1,000) per violation by an unlicensed manufacturer, retailer, or installer of any provision of this chapter or of the regulations promulgated under this chapter.

(n) The commission shall adopt regulations, issue orders, and otherwise act as necessary to:

(1) Comply with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. § 5414; and

(2) Provide for the effective enforcement of all the Manufactured Home Construction and Safety Standards, 24 C.F.R. Part 3280, in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., approved by the Secretary of the United States Department of Housing and Urban Development.

History. Acts 1977, No. 419, §§ 7, 12; 1981, No. 533, §§ 7, 12; 1983, No. 416, § 2; 1985, No. 314, § 2; A.S.A. 1947, §§ 82-3021, 82-3026; Acts 1991, No. 632, § 1; 2001, No. 1067, § 3; 2005, No. 1235, §§ 2, 3; 2007, No. 1010, § 2; 2011, No. 346, § 1.

Amendments. The 2007 amendment added the (a)(1)(A)(i) designation; rewrote (a)(1)(A)(i); added (a)(1)(A)(ii) and (a)(1)(B); added the (a)(2)(A) designation; inserted "homes" twice in (a)(2)(A); redesignated former (a)(3) as (a)(2)(B); rewrote (a)(2)(B); added (a)(2)(C); inserted "installers" in (b); added (c)(1)(A); added the (c)(1)(B) designation; inserted "to the commission" in (c)(1)(B); added (c)(2); added "or the regulations promulgated by the commission" in (d)(1); substituted "appeals of determinations of responsibility for the correction of defects by" for "an appeal involving differences among manufactured home" in (d)(2); added (n); and made minor punctuation and stylistic changes.

The 2011 amendment inserted "or modular homes" in (a)(2)(C).

20-25-107. Administration by Director of the Arkansas Manufactured Home Commission.

(a) The Director of the Arkansas Manufactured Home Commission shall be appointed by the Arkansas Manufactured Home Commission.

(b) The director shall administer the code for manufactured homes and the regulations promulgated by the commission.

(c)(1) The director shall establish an inspection system sufficient to ensure compliance with the code by providing for inspections by members of his or her own inspection staff or by authorized representatives certified by the commission.

(2) The director and his or her staff shall have the right to enter and inspect all factories, warehouses, or establishments in which manufactured or modular homes are manufactured.

(d) With the approval of the commission, the director shall:

(1) Establish reasonable fees for certification, including licensing of manufactured or modular home salespersons and setting up, installing, and anchoring manufactured homes; and

(2) Establish monitoring inspection fees in accordance with the guidelines established by the Secretary of the United States Department of Housing and Urban Development and provide for participation in the fee distribution system set out in 24 C.F.R. § 3282.307.

(e) Within the limits of appropriation, the director may appoint such employees as he or she may deem necessary for the administration of this chapter.

History. Acts 1977, No. 419, § 7; 1981, No. 533, § 7; A.S.A. 1947, § 82-3021; Acts 2005, No. 1235, § 4; 2007, No. 1010, § 2.

Amendments. The 2007 amendment added "and the regulations promulgated by the commission" in (b); added "or by authorized representatives certified by the commission" in (c)(1); and substituted "Secretary of the United States Department of Housing and Urban Development" for "Secretary of Housing and Urban Development" in (d)(2).

20-25-108. Compliance with code required.

(a) No retailer shall sell or offer for sale within this state any new manufactured home unless the manufactured home complies with the code.

(b) No person shall manufacture in this state or manufacture out of this state and ship into this state for sale any new manufactured home unless the manufactured home complies with the code.

History. Acts 1977, No. 419, § 3; 1981, No. 533, § 3; A.S.A. 1947, § 82-3017; Acts 2001, No. 1067, § 4; 2007, No. 1010, § 2.

Amendments. The 2007 amendment inserted "new" in (a) and (b).

20-25-109. Label of compliance.

(a) No retailer shall sell or offer for sale to anyone within this state any manufactured home manufactured after June 15, 1976, unless the manufactured home bears a United States Department of Housing and Urban Development label issued by the department or its contract agent.

(b) All manufacturers of new manufactured homes in this state shall cause to be affixed a department label on all manufactured homes.

(c) The Director of the Arkansas Manufactured Home Commission, acting as in-plant primary inspection agency on contract with the department, shall issue labels to any manufacturer when he or she is sure, by inspection of the plant, that the manufacturer is complying with the federal Standard Code For Manufactured Homes.

(d)(1) All manufactured homes bearing a department label issued by the department pursuant to this chapter shall be deemed to comply with the requirements of all ordinances or regulations enacted by any local government which are applicable to the construction of such housing.

(2) The determination by the department of the scope of the approval is final.

(e) No person shall alter or cause to be altered any manufactured home to which a label has been affixed if the alteration or conversion causes the manufactured home to be in violation of the code.

History. Acts 1977, No. 419, §§ 4-6, 11; 1981, No. 533, §§ 4-6, 11; A.S.A. 1947, §§ 82-3018 — 82-3020, 82-3025; Acts 2001, No. 1067, § 5; 2007, No. 1010, § 2.

Amendments. The 2007 amendment inserted "United States" in (a) and "new" in (b).

20-25-111. Reports.

All manufacturers, distributors, retailers, and installers in this state shall make and maintain such reports and information deemed necessary and shall provide the Secretary of the United States Department of Housing and Urban Development such reports and information as the secretary may require pursuant to Title VI of Pub. L. No. 93-383.

History. Acts 1977, No. 419, § 3; 1981, No. 533, § 3; A.S.A. 1947, § 82-3017; Acts 2001, No. 1067, § 6; 2007, No. 1010, § 3.

Amendments. The 2007 amendment substituted "distributors, retailers, and installers" for "distributors and retailers," inserted "and maintain," inserted "and information deemed necessary," and substituted "shall provide the Secretary of the United States Department of Housing" for "provide the Secretary of the Department of Housing."

20-25-113. Purchase agreement and consumer disclosure.

(a)(1) All manufactured home retailers shall be required to provide a written purchase agreement to the purchaser of each new manufactured home sold in the State of Arkansas.

(2) Each written purchase agreement issued by a manufactured home retailer upon the purchase of a new manufactured home shall include, but not be limited to:

(A) The make, model, and gross purchase price of the new manufactured home;

(B) Options or material upgrades which influence the purchase price of the new manufactured home;

(C) Transportation and delivery arrangements, if applicable; and

(D) Installation, set-up, and anchoring arrangements, if applicable.

(3) A knowing violation of subsection (a) of this section shall constitute an unfair or deceptive act or practice as defined by the Deceptive Trade Practices Act, § 4-88-101 et seq., and shall be subject to all remedies, penalties, and authority granted to the Attorney General under the Deceptive Trade Practices Act, § 4-88-101 et seq. This section shall not create a private right of action, but this section shall not preclude any new manufactured home purchaser from availing himself or herself of other legal or administrative remedies provided by other laws.

(b)(1) All manufactured home retailers shall be required to provide a consumer disclosure to the purchaser of each manufactured home sold in the State of Arkansas.

(2) Each consumer disclosure issued by a manufactured home retailer before the completion of purchase of a manufactured home shall include the following information, as applicable:

(A) A statement that the manufactured home will be required to comply with state requirements for installation;

(B) Notice that the manufactured home may also be required to comply with additional state and local requirements not addressed in the state requirements for installation, such as zoning and connection to required utilities;

(C) That additional information regarding the construction and installation standards is available from the retailer, the Arkansas Manufactured Home Commission, or the United States Department of Housing and Urban Development;

(D) That inspection for compliance with applicable federal, state, and local requirements may involve additional costs to the purchaser; and

(E) A recommendation that any manufactured home installed after its original purchase and installation should be inspected upon reinstallation.

History. Acts 1997, No. 1220, § 1; 2001, No. 1067, § 7; 2007, No. 1010, § 4.

Amendments. The 2007 amendment added "and consumer disclosure" to the

section heading; redesignated former (a) as (a)(1); redesignated former (b) as (a)(2) and redesignated the remaining subsections accordingly; inserted "new manufactured" in (a)(2)(B); and added present (b).

CHAPTER 27

MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

SUBCHAPTER.

3. Blood Donations.
7. Public Smoking.
10. Removal of Asbestos Material.
15. Body Piercing, Branding, and Tattooing.
16. Children's Product Safety Act of Arkansas.
18. Arkansas Clean Indoor Air Act of 2006.
19. Arkansas Protection from Secondhand Smoke for Children Act of 2006.
20. Breastfeeding In Public.
21. Arkansas Cigarette Fire Safety Standard Act.
22. Tanning Facilities.
23. The Arkansas Children's Imitation Firearms Act.
24. Sale of Herbal Snuff to Minors.
25. Arkansas Lead-Based Paint-Hazard Act of 2011.
26. Gambling Advertisements.

A.C.R.C. Notes. Acts 2011, No. 1102, § 25, provided: "DEVELOPMENT RESTRICTIONS. In reviewing the impact on public health and safety of a plan for improvements to a public water system or public sewer system through the addition of distribution lines to a subdivision or commercial development, the Division of Engineering of the Department of Health shall consider the effect of the plan on future development or zoning of adjoining properties.

"The provisions of this section shall be in effect only from July 1, 2011 through June 30, 2012."

Subchapter 3 — Blood Donations

SECTION.

20-27-301. Donation by minors seventeen years of age or older — Written permission required for minors sixteen years of age.

Effective Dates. Acts 2009, No. 152, § 2: Feb. 12, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that recent disasters have created a serious shortage of human blood; that to prevent future shortages, the pool of donors must be increased; and that this act is immediately necessary because a broad, new pool of blood donors will become available to help alleviate the immediate shortage and to prevent future shortages of human blood. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-27-301. Donation by minors seventeen years of age or older — Written permission required for minors sixteen years of age.

(a)(1) Any minor who has reached seventeen (17) years of age may act as a blood donor to any nonprofit blood bank or any licensed hospital without consideration.

(2) The consent of the minor seventeen (17) years of age or older shall not be subject to disaffirmance because of the minority of the donor.

(3) The consent of the parent or guardian of the minor seventeen (17) years of age or older shall not be necessary to authorize the taking of blood from the minor.

(b) A minor sixteen (16) years of age may act as a blood donor to a nonprofit blood bank or a licensed hospital without consideration, if the minor sixteen (16) years of age obtains written permission or authorization from his or her parent or guardian.

(c) However, nothing in this section relieves a blood bank or hospital or its agents or employees from civil liability for any negligence in taking the blood of a minor.

History. Acts 1971, No. 44, § 1; 1977, No. 449, § 1; A.S.A. 1947, § 82-1606; Acts 2009, No. 152, § 1.

Amendments. The 2009 amendment rewrote the section heading; redesignated (a) and (b) as (a); inserted "seventeen (17) years of age or older" in (a)(2) and (a)(3); inserted (b) and redesignated the following subsection accordingly; and made a stylistic change in (c).

Subchapter 7 — Public Smoking

SECTION.

20-27-701 — 20-27-703. [Repealed.]

Effective Dates. Acts 2006 (1st Ex. Sess.), No. 8, § 3: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the Eighty-fifth General Assembly that there is a pressing and immediate need to protect the citizens of Arkansas from secondhand smoke. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective sixty (60) days after: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-27-701 — 20-27-703. [Repealed.]

Publisher's Notes. These sections, concerning public policy, penalties, and exceptions to prohibiting public smoking, were repealed by Acts 2006 (1st Ex. Sess.), No. 8, § 2. The sections were derived from the following sources:

20-27-701. Acts 1977, No. 728, § 1; A.S.A. 1947, § 82-3701.

20-27-702. Acts 1977, No. 728, § 3; A.S.A. 1947, § 82-3703; Acts 2005, No. 1994, § 125.

20-27-703. Acts 1977, No. 728, § 2; A.S.A. 1947, § 82-3702.

Subchapter 10 — Removal of Asbestos Material

SECTION.
20-27-1004. Powers and duties of the Arkansas Department of Environmental Quality.

20-27-1002. Penalties.

RESEARCH REFERENCES

ALR. Retroactive Application of State Statutes Concerning Asbestos Liability. 41 A.L.R.6th 445.

20-27-1004. Powers and duties of the Arkansas Department of Environmental Quality.

The Arkansas Department of Environmental Quality shall be charged with the responsibility of administering and enforcing this subchapter and is given and charged with the following powers and duties:

(1) To require and regulate training and examinations for all disciplines certified by this subchapter and the regulations promulgated pursuant to this subchapter;

(2) To establish standards and procedures for the licensing of consultants, contractors, and training providers and to establish performance standards for the abatement of friable and nonfriable asbestos materials. The performance standards shall be as stringent as those standards adopted by the United States Environmental Protection Agency pursuant to section 112 of the Clean Air Act;

(3) To enforce regulations necessary or appropriate to the implementation of this subchapter, including taking legal action in any court of competent jurisdiction;

(4) To issue licenses and certificates to all applicants who satisfy the requirements of this subchapter and any regulations issued pursuant to this subchapter, to renew the licenses and certificates, and to suspend or revoke the licenses and certificates for cause and after notice and opportunity for hearing; and

(5) To establish annual license fees for asbestos abatement consultants, asbestos abatement contractors, and training providers, annual certification fees for air monitors, contractor/supervisors, inspectors, management planners, project designers, and workers in order to recover the costs of processing license and certificate applications and the issuance of licenses and certificates, and such other fees as are necessary to recover the costs of enforcing this subchapter.

History. Acts 1985, No. 394, § 3; A.S.A. 1947, § 82-1946; Acts 1987, No. 531, § 3; 1993, No. 817, § 3; 1997, No. 308, § 1; 1997, No. 309, § 2.

A.C.R.C. Notes. Acts 2009, No. 1387, § 37, provided: "ADEQ ASBESTOS PROGRAM. The fees collected pursuant to Arkansas Code 20-27-1004(5) shall be used by the department to fund operational expenses and to provide and train personnel to administer an asbestos program, as funding is available, including:

"(a) Personnel dedicated to issue certificates and licenses to qualified persons/companies, to perform audit of trainers, and to regularly update the ADEQ web page providing a listing of asbestos licensed parties;

"(b) Personnel who are trained as asbestos supervisors as defined by Arkansas Code 20-27-1003 and Arkansas Pollution Control and Ecology Commission Regulation No.21 to approve asbestos Notices of Intent, perform and coordinate asbestos inspections, conduct enforcement actions, and provide regulatory compliance information to assist the regulated community. Asbestos inspectors shall have personal protective equipment when needed to enter a regulated area; and

"(c) Other personnel as necessary to administer the asbestos program."

Acts 2010, No. 213, § 37, provided: "ADEQ ASBESTOS PROGRAM. The fees collected pursuant to Arkansas Code 20-27-1004(5) shall be used by the department to fund operational expenses and to provide and train personnel to administer an asbestos program, as funding is available, including:

"(a) Personnel dedicated to issue certificates and licenses to qualified persons/companies, to perform audit of trainers, and to regularly update the ADEQ web page providing a listing of asbestos licensed parties;

"(b) Personnel who are trained as asbestos supervisors as defined by Arkansas Code 20-27-1003 and Arkansas Pollution Control and Ecology Commission Regulation No. 21 to approve asbestos Notices of Intent, perform and coordinate asbestos inspections, conduct enforcement actions, and provide regulatory compliance information to assist the regulated community. Asbestos inspectors shall have personal protective equipment when needed to enter a regulated area; and

"(c) Other personnel as necessary to administer the asbestos program."

Acts 2011, No. 957, § 37, provided: "ADEQ ASBESTOS PROGRAM. The fees collected pursuant to Arkansas Code 20-27-1004(5) shall be used by the department to fund operational expenses and to provide and train personnel to administer an asbestos program, as funding is available, including:

"(a) Personnel dedicated to issue certificates and licenses to qualified persons/companies, to perform audit of trainers, and to regularly update the ADEQ web page providing a listing of asbestos licensed parties;

"(b) Personnel who are trained as asbestos supervisors as defined by Arkansas Code 20-27-1003 and Arkansas Pollution Control and Ecology Commission Regulation No.21 to approve asbestos Notices of Intent, perform and coordinate asbestos inspections, conduct enforcement actions, and provide regulatory compliance information to assist the regulated community. Asbestos inspectors shall have personal protective equipment when needed to enter a regulated area; and

"(c) Other personnel as necessary to administer the asbestos program."

20-27-1006. License required — Exceptions.

RESEARCH REFERENCES

ALR. Retroactive Application of State Statutes Concerning Asbestos Liability. 41 A.L.R.6th 445.

Subchapter 15 — Body Piercing, Branding, and Tattooing

SECTION.
20-27-1501. Definitions.
20-27-1502. Unlawful to perform body art on a person under eighteen years of age.
20-27-1503. Department of Health to license, regulate, and inspect for health hazards.
20-27-1504. Local health officials.
20-27-1505. No criminal liability.
20-27-1506. Blood-borne pathogens course.
20-27-1507. Education of artist in training.
20-27-1508. Examination — Fee.
20-27-1509. Temporary demonstration license.

20-27-1501. Definitions.

As used in this subchapter:

(1) "Artist" means any person other than a licensed physician who performs body art on a human;

(2) "Artist in training" means a person who:

(A) Is in training under the supervision of an artist trainer or a physician; and

(B) Shall not independently perform body art;

(3) "Artist trainer" means an artist who:

(A) Is licensed by the Department of Health;

(B) Has worked in a body art establishment licensed by the department for at least three (3) years and been in compliance with department rules governing body artists;

(C) Has completed the course required under § 20-27-1506; and

(D) Is a registered instructor with the State Board of Private Career Education;

(4) "Body art" means procedures that include:

(A) Tattooing;

(B) Body piercing;

(C) Branding; or

(D) Permanent cosmetics;

(5)(A) "Body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration.

(B) "Body piercing" shall not include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear;

(6) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument;

(7) "Establishment" means any place or facility:

(A) Where body art is performed; and

(B) That has a body artist licensed in Arkansas on staff;

(8) "Guest artist" means a body artist from a state other than Arkansas or a country other than the United States who holds a license from the body art regulatory board or agency in that state or country;

(9) "Permanent cosmetics" means the application of permanent or semipermanent pigmentation by the penetration of the skin with a needle or instrument to:

(A) The face for cosmetic purposes; or

(B) Any part of the body for scar coverage or other corrective purposes; and

(10)(A) "Tattooing" means any method of placing designs, letters, scrolls, figures, symbols, or any other marks upon or under the skin by introducing pigments or by the production of scars to form indelible marks with the aid of needles or other instruments.

(B) "Tattooing" does not include permanent cosmetics.

History. Acts 2001, No. 414, § 1; 2005, No. 897, § 1; 2007, No. 230, § 1.

Amendments. The 2007 amendment rewrote the section heading, redesignated former (1) as (2) and former (2) as (1); substituted "body art" for "body piercing, branding, or tattooing" in (1) and (2)(B); substituted "Artist in training" for "Apprentice" in the introductory language of (2) and substituted "Shall" for "May" in (2)(B); deleted "Division of Health of the" preceding "Department" in (3)(A); in (3)(B), substituted "department" for "division" twice, and inserted "body"; added (3)(D) and made related changes; rewrote (4); rewrote (6); added (7) (8) and (9) and redesignated the remaining subsection accordingly; deleted "including permanent cosmetics" in (10)(A); and added (10)(B) and made a related change.

20-27-1502. Unlawful to perform body art on a person under eighteen years of age.

(a) A person under eighteen (18) years of age shall not undergo body art unless:

(1) Written consent is given by the person's parent or legal guardian; and

(2)(A) The parent or legal guardian is present during the procedure.

(B) When providing written consent, the parent or legal guardian shall produce photo-bearing identification and attest in writing that the individual is the person's parent or legal guardian.

(b) Regardless of age, the person receiving the body art shall attest to the fact that he or she is not under the influence of drugs or alcohol.

(c) Printed instructions on the care of the skin and the body art shall be given to each person after the procedure, and a copy of the instructions shall be posted in a conspicuous place in the body art establishment.

(d)(1) In addition to the attestations required in subsections (a) and (b) of this section, records shall be kept of the names of all persons receiving body art and of the parents or guardians giving consent under the rules promulgated by the State Board of Health to implement this subchapter.

(2) All required signatures shall be in ink, and required records shall be available at a reasonable time for examination by the Department of Health and by local health officials.

(e)(1) Except as provided in subsection (a) of this section, it is unlawful to perform body art on a person under eighteen (18) years of age, and any person who pleads guilty or nolo contendere to or is found guilty of a violation of this subdivision (e)(1) is guilty of a Class C misdemeanor.

(2) Any person who falsely claims to be the minor's parent or legal guardian for the purpose of obtaining body art for a person under eighteen (18) years of age shall be guilty of a Class A misdemeanor.

(3) It is not a defense to a criminal prosecution under this section that at the time of the offense, the person who received the body art possessed a letter of consent from the person's parent or legal guardian if the letter was forged or if a person falsely assumed the identity of the minor's parent or legal guardian.

(f)(1) It is unlawful to perform body art on any person under eighteen (18) years of age in any unlicensed facility.

(2) A person who pleads guilty or nolo contendere to or is found guilty of a violation of subdivision (f)(1) of this section is guilty of a Class D felony.

History. Acts 2001, No. 414, § 1; 2007, No. 230, § 2; 2009, No. 1212, § 1.

Amendments. The 2007 amendment substituted "perform body art on" for "body pierce, brand, or tattoo" in the section heading; substituted "body art" for "body piercing, branding, or tattooing" throughout the section; substituted "perform body art on" for "body pierce, brand, or tattoo" in the introductory paragraph and (e)(1); substituted "body art establishment" for "body piercing, branding, or tattooing studio or business" in (c); substituted "body art" for "a body piercing, branding, or tattooing" in (d)(1) and (e)(2); and deleted "Division of Health of the" preceding "Department" in (d)(2).

The 2009 amendment substituted "Department of Health" for "Department of Health and Human Services" in (d)(2); substituted "who pleads guilty or nolo contendere to or is found guilty of a violation of this subdivision is" for "violating this prohibition shall be" in (e)(1); added (f); and made a minor stylistic change.

20-27-1503. Department of Health to license, regulate, and inspect for health hazards.

(a)(1) Body art establishments which and artists who perform body art shall be licensed by the Department of Health.

(2) The business premises, equipment, procedures, techniques, and conditions of those businesses shall be subject to periodic inspection by the department.

(b)(1) The department may adopt appropriate rules regarding the artists, premises, equipment, procedures, techniques, and conditions of establishments which perform procedures subject to this subchapter to assure that the premises, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard.

(2) Any rule affecting body art establishments in effect on August 13, 2001, shall remain in effect until the State Board of Health adopts rules pursuant to this subchapter.

(c) Applicants for a license shall file applications upon forms prescribed by the department.

(d) A license shall be issued only for the premises and persons in the application and shall not be transferable.

(e)(1)(A) The department shall levy and collect an annual fee of one hundred fifty dollars ($150) per facility for issuance of a license to an establishment that performs body art.

(B) The department shall levy and collect an annual fee of one hundred dollars ($100) per artist for issuance of a license to an artist who performs body art.

(2) The annual fee shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.

(3) If the annual fee for a licensed establishment has not been paid by March 1 of the calendar year, the establishment shall be closed until a new license has been issued by the department and the annual fee has been paid.

(4)(A) If the annual fee for a licensed artist has not been paid by March 1 of the calendar year, the artist shall have his or her license revoked.

(B) If an artist has his or her license revoked, he or she shall be retested and complete a new residency as an artist in training under a licensed artist before a license may be reissued.

(5) In addition to the penalty provisions found in this subsection, any studio or business owner operating without a current license is subject to the penalties and fines allowed by § 20-7-101.

(f) All fees levied and collected under this subchapter are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund to be used exclusively for the Tattoo and Piercing Program of the department.

(g) Subject to any rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department may transfer all unexpended funds relative to the health facility services that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 2001, No. 414, § 1; 2003, No. 266, § 1; 2007, No. 230, § 3.

Amendments. The 2007 amendment deleted "Division of Health of the" preceding "Department" in the section heading and in (a)(1); substituted "body art" for "body piercing, branding, or tattooing" and "department" for "division" throughout the section; substituted "Body art establishments" for "Body piercing, branding, and tattooing studios and businesses" in (a)(1); substituted "establishments" for "studios and businesses" in (b)(1); in (b)(2), substituted "affecting body art establishment" for "or regulation affecting tattoo artists or studios" and deleted "and regulations" following "rules"; substituted "an establishment" for "a studio or business" in (e)(1)(A); substituted "establishment" for "business" twice in (e)(3); and substituted "residency as an artist in training" for "apprenticeship" in (e)(4)(B).

20-27-1504. Local health officials.

(a) Any city or county department of health may periodically inspect body art establishments on the basis of compliance with state, city, or county sanitary regulations.

(b) The governing body of any municipality or county may adopt by ordinance local sanitary regulations of body art establishments.

History. Acts 2001, No. 414, § 1; 2007, No. 230, § 4.

Amendments. The 2007 amendment substituted "body art establishments" for "body piercing, branding, or tattooing studios and businesses which perform body piercing, branding, or tattooing" in (a) and (b).

20-27-1505. No criminal liability.

Nothing in this subchapter creates any liability, criminal or otherwise, for a person under eighteen (18) years of age for undergoing body art.

History. Acts 2001, No. 414, § 1; 2007, No. 230, § 5.

Amendments. The 2007 amendment substituted "undergoing body art" for "having the body pierced, branded, or tattooed."

20-27-1506. Blood-borne pathogens course.

(a)(1) Each artist trainer and artist in training shall complete a blood-borne pathogens course approved by the Department of Health.

(2) Each artist trainer shall complete the course before training any artist in training.

(3) Each artist in training shall complete the course before applying for the examination required under § 20-27-1508.

(b)(1)(A) The department shall promulgate rules to establish standards for the blood-borne pathogens course required under this section.

(B) The course shall require a minimum of two (2) hours of direct instruction.

(2) The course may be taught by providers approved by the department, including without limitation:

(A) The American Red Cross;

(B) Any nationally recognized body art organization;

(C) Any institution of higher learning; and

(D) Any other individual or group approved by the department.

History. Acts 2005, No. 897, § 2; 2007, No. 230, § 6.

Amendments. The 2007 amendment substituted "artist in training" for "apprentice" and "department" for "division" throughout the section; deleted "Division of Health of the" preceding "Department" in (a)(1); and substituted "without limitation" for "but not limited to" in (b)(2).

20-27-1507. Education of artist in training.

(a) An artist trainer shall be a registered instructor in a school licensed by the State Board of Private Career Education.

(b)(1)(A) During the artist training, each artist in training shall complete not less than three hundred seventy-five (375) clock hours of supervised body art work and classroom instruction in a period not less than six (6) months or more than twenty-four (24) months in an establishment licensed under § 20-27-1503 and § 6-51-601 et seq.

(B) Additional fields of body art training may be added by completing not less than two hundred fifty (250) clock hours of technical

and procedural training in each of the other fields of body art in which an artist in training is to be licensed.

(2)(A) The artist trainer shall maintain a training log of the clock hours completed by the artist in training.

(B) The completed training log shall be submitted to the Department of Health at the time of the practical examination under § 20-27-1508.

History. Acts 2005, No. 897, § 2; 2007, No. 230, § 7.

Amendments. The 2007 amendment rewrote the section.

20-27-1508. Examination — Fee.

(a)(1)(A) Each artist in training seeking licensure as an artist under the rules of the Department of Health shall take a written examination and a practical examination prepared or approved by the department.

(B) Upon completion of the hours required under § 20-27-1507, a practical examination shall be conducted by the department in each field of training for which the artist in training is seeking licensure.

(2) Until an artist in training receives a passing grade on both the written examination and the practical examination, no artist in training may:

(A) Be licensed as an artist;

(B) Hold himself or herself out as a licensed artist; or

(C) Independently perform body art.

(b) The department shall levy and collect a fee of fifty dollars ($50.00) from each artist in training who applies to take the written and practical examinations required under this section for licensure as an artist.

History. Acts 2005, No. 897, § 2; 2007, No. 230, § 8.

Amendments. The 2007 amendment substituted "artist in training" for "apprentice" and "department" for "division" throughout the section; deleted "Division of Health of the" preceding "Department" in (a)(1)(A); added (a)(1)(B) and made a related change; and substituted "body art" for "body piercing, branding, or tattooing" in (a)(2)(C).

20-27-1509. Temporary demonstration license.

(a) The Department of Health may issue a temporary demonstration license to an artist or establishment or to a supplier of materials for body art for:

(1) Educational purposes;

(2) Trade shows;

(3) Demonstrations of body art products or procedures; and

(4) An appearance as a guest artist.

(b) A temporary demonstration license shall be valid for no more than fourteen (14) consecutive calendar days.

(c) The department shall levy and collect a fee of one hundred fifty dollars ($150) for each temporary demonstration license.

(d)(1) An application for a temporary demonstration license shall be submitted to the department not less than forty-five (45) days prior to the event or appearance as a guest artist.

(2) An artist shall provide evidence of completion of a blood-borne pathogens course with the application.

(e)(1) A person applying for a temporary demonstration license to appear as a guest artist shall provide documentation of licensure in another state or country before the temporary demonstration license may be granted.

(2) The establishment where the guest artist is appearing shall have a licensed body artist on its staff.

(3) A guest artist may be issued a temporary demonstration license to appear as a guest artist no more than one (1) time every six (6) months.

History. Acts 2005, No. 897, § 2; 2007, No. 230, § 9.

Amendments. The 2007 amendment, in the introductory paragraph of (a), deleted "Division of Health of the" preceding "Department", and substituted "or establishment or to a supplier of materials for body art" for "studio, or business that performs body piercing, branding, or tattooing or to a supplier of materials for body piercing, branding, or tattooing"; substituted "body art" for "body piercing, branding, or tattooing" in (a)(3); added (a)(4) and made related changes; inserted "calendar" in (b); substituted "department" for "division" in (c); and added (d) and (e).

Subchapter 16 — Children's Product Safety Act of Arkansas

SECTION.

20-27-1603. Unsafe children's products — Prohibition.

20-27-1603. Unsafe children's products — Prohibition.

(a) No commercial user shall remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce a children's product that is unsafe.

(b) A children's product is unsafe for purposes of this subchapter if it meets any of the following criteria:

(1) It does not conform to federal law and regulatory standards for the children's product;

(2) It has been recalled for any reason by an agency of the federal government or by the product's manufacturer, distributor, or importer, and the recall has not been rescinded; or

(3) An agency of the federal government has issued a warning that a specific product's intended use constitutes a safety hazard, and the warning has not been rescinded.

(c)(1) The Attorney General shall create, maintain, and update quarterly a comprehensive list of children's products that have been identified as recalled children's products as determined by the United States Consumer Product Safety Commission.

(2) The Attorney General shall make the comprehensive list available to the public at no cost by posting it on the Internet and encouraging links from the Internet site.

(d) A crib is unsafe if it does not conform to the standards existing on January 1, 2001, endorsed or established by the Consumer Product Safety Commission, including, but not limited to, Title 16 of the Code of Federal Regulations and the American Society for Testing and Materials, as follows:

(1) 16 C.F.R. § 1508 and any regulations adopted to amend or supplement the regulations;

(2) 16 C.F.R. § 1509 and any regulations adopted to amend or supplement the regulations;

(3) 16 C.F.R. § 1303 and any regulations adopted to amend or supplement the regulations; and

(4) The following standards and specifications as exist on January 1, 2001, of the American Society for Testing Materials for corner posts of baby cribs and structural integrity of baby cribs:

(A) American Society for Testing Materials F 966-90, concerning corner post standard;

(B) American Society for Testing Materials F 1169-88, concerning structural integrity of full-size baby cribs; and

(C) American Society for Testing Materials F 1822-97, concerning non-full-size cribs.

(e) Cribs that are unsafe shall include, but not be limited to, cribs that have any of the following dangerous features or characteristics:

(1) Corner posts that extend more than one-sixteenth inch (1/16″);

(2) Spaces between side slats more than two and three hundred seventy-five hundredths inch (2.37″);

(3)(A) Mattress support that can be easily dislodged from any point of the crib.

(B) A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five-pound upward force from underneath the crib;

(4) Cutout designs on the end panels;

(5) Rail height dimensions that do not conform to both of the following:

(A) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches (9″); and

(B) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches (26″);

(6) Any screws, bolts, or hardware that are loose and not secured;

(7) Sharp edges, points, or rough surfaces or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(8) Tears in mesh or fabric sides in a non-full-size crib;

(9) A non-full-size crib that folds in a "V" shape design that does not have top rails that automatically lock into place when the crib is fully set up; or

(10) The mattress pad in a non-full-size mesh or fabric crib exceeds one inch (1″).

(f)(1) An unsafe children's product may be retrofitted if the retrofit has been approved by the agency of the federal government issuing the recall or warning or the agency responsible for approving the warning.

(2) A retrofitted children's product may be sold if it is accompanied at the time of sale by a notice declaring that it is safe to use for a child under six (6) years of age.

(3) The notice shall include:

(A) A description of the original problem which made the recalled product unsafe;

(B) A description of the retrofit which explains how the original problem was eliminated and declaring that it is now safe to use for a child under six (6) years of age; and

(C)(i) The name and address of the commercial user who accomplished the retrofit certifying that the work was done, along with the name and model number of the product retrofitted.

(ii) The commercial user is responsible for ensuring that the notice is present with the retrofitted product at the time of sale.

(g) A retrofit is exempt from this subchapter if:

(1) The retrofit is for a children's product that requires assembly by the consumer;

(2) The approved retrofit is provided with the product by the commercial user;

(3) The retrofit is accompanied at the time of sale by instructions explaining how to apply the retrofit; or

(4) The seller of a previously unsold product accomplishes prior to sale the repair approved or recommended by an agency of the federal government.

History. Acts 2001, No. 1313, § 3; 2003, No. 1159, § 1; 2007, No. 827, § 167.

Amendments. The 2007 amendment deleted "to the top of the mattress support in its highest position" following "in its highest position" in (e)(5)(B).

Subchapter 18 — Arkansas Clean Indoor Air Act of 2006

SECTION.
20-27-1801. Title.
20-27-1802. Findings.
20-27-1803. Definitions.
20-27-1804. Prohibitions on smoking.
20-27-1805. Exemptions.
20-27-1806. Notice of prohibition of smoking.
20-27-1807. Rules — Promulgation and enforcement authority.
20-27-1808. Subchapter deemed cumulative.
20-27-1809. Penalties.

Effective Dates. Acts 2006 (1st Ex. Sess.), No. 8, § 3: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the Eighty-fifth General Assembly that there is a pressing and immediate need to protect the citizens of Arkansas from secondhand smoke. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective sixty (60) days after: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-27-1801. Title.

This subchapter shall be known as the "Arkansas Clean Indoor Air Act of 2006".

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1802. Findings.

(1) Information available to the General Assembly based upon scientific research data has shown that nonsmokers often receive damage to their health from the smoking of tobacco by others;

(2) Direct smoking of tobacco and indirect smoking of tobacco through inhaling the smoke of those who are smoking nearby are major causes of preventable diseases and death;

(3) Secondhand smoke is a known cause of lung cancer, heart disease, chronic lung ailments such as bronchitis and asthma, particularly in children, and low birth-weight births;

(4) Implementing laws that prohibit tobacco usage in certain public areas, buildings, and facilities is an effective approach to reducing secondhand smoke exposure among nonsmokers; and

(5) It is therefore declared to be the public policy of this state that the rights of Arkansans be protected in the manner provided in this subchapter.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1803. Definitions.

As used in this subchapter:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to:

(A) Taverns;

(B) Nightclubs;

(C) Cocktail lounges; and

(D) Cabarets;

(2) "Business" means any corporation, sole proprietorship, partnership, limited partnership, professional corporation, enterprise, fran-

chise, association, trust, joint venture, or other entity, whether for profit or nonprofit;

(3) "Employee" means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit;

(4) "Employer" means an individual or a business that employs one (1) or more individuals;

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, that extend from the floor to the ceiling;

(6)(A) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions.

(B) "Health care facility" includes the building or buildings in which a medical facility operates, together with all property owned or operated by a medical facility that is contiguous to the building or buildings in which medical services are provided.

(C) "Health care facility" does not include:

(i) Medical facilities under § 20-27-704 et seq.;

(ii) Psychiatric hospitals as defined by the Department of Health's rules for hospitals and related institutions; or

(iii) Long-term care facilities;

(7) "Infiltrate" means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke;

(8) "Local governing authority" means a county or municipal corporation of the state;

(9)(A) "Place of employment" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to:

(i) Work areas;

(ii) Employee lounges;

(iii) Restrooms;

(iv) Conference rooms;

(v) Meeting rooms;

(vi) Classrooms;

(vii) Employee cafeterias; and

(viii) Hallways.

(B) A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility;

(10)(A) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:

(i) Banks;

(ii) Bars;

(iii) Educational facilities;

(iv) Health care facilities;
(v) Laundromats;
(vi) Public transportation facilities;
(vii) Reception areas;
(viii) Restaurants;
(ix) Retail food production and marketing establishments;
(x) Retail service establishments;
(xi) Retail stores;
(xii) Shopping malls;
(xiii) Sports arenas;
(xiv) Theaters; and
(xv) Waiting rooms.

(B) A private residence is not a public place unless it is used as a licensed child care, adult day care, or health care facility;

(11)(A) "Restaurant" means:

(i) An eating establishment that gives or offers for sale food to the public, guests, or employees; and

(ii) A kitchen or a catering facility in which food is prepared on the premises for serving elsewhere.

(B) "Restaurant" includes, but is not limited to:

(i) Coffee shops;
(ii) Cafeterias;
(iii) Sandwich stands; and
(iv) Private and public school cafeterias.

(C) "Restaurant" does include a bar area within any restaurant;

(12) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental;

(13) "Secondhand smoke" means smoke:

(A) Emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling;

(B) Emitted at the mouthpiece during puff drawing; and

(C) Exhaled by the person smoking;

(14) "Service line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(15) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(16) "Smoking" means inhaling, exhaling, burning, or carrying any:

(A) Lighted tobacco product, including cigarettes, cigars, and pipe tobacco; and

(B) Other lighted combustible plant material; and

(17) "Sports arena" means a stadium, a sports pavilion, a gymnasium, a health spa, a boxing arena, a swimming pool, a roller rink, an ice rink, a bowling alley, and other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1804. Prohibitions on smoking.

(a) Effective July 21, 2006, smoking is prohibited in all vehicles and enclosed areas owned, leased, or operated by the state, its agencies and authorities, and any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

(b)(1) Smoking is prohibited in all public places and enclosed areas within places of employment, including, but not limited to:

(A) Common work areas;
(B) Auditoriums;
(C) Classrooms;
(D) Conference and meeting rooms;
(E) Private offices;
(F) Elevators;
(G) Hallways;
(H) Health care facilities;
(I) Cafeterias;
(J) Employee lounges;
(K) Stairs;
(L) Restrooms; and
(M) All other enclosed areas.

(2) An individual, a person, an entity, or a business subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation to a person, an entity, or a business or to an enforcement authority.

(3) The prohibitions on smoking in subsections (a) and (b) of this section and the provisions of subdivision (b)(2) of this section shall be communicated to all current employees by their employer within thirty (30) days of July 21, 2006, and to each prospective employee upon application for employment.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1805. Exemptions.

An owner or operator of any of the following areas may exempt itself from this subchapter:

(1) Private residences except when used as a licensed child care, adult daycare, or health care facility;

(2)(A) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(B) However, if a hotel or motel has more than twenty-five (25) guest rooms, not more than twenty percent (20%) of rooms rented to guests in the hotel or motel may be designated as exempt from this subchapter;

(3)(A) All workplaces of any employer with fewer than three (3) employees.

(B) This exemption does not apply to any public place;

(4) A retail tobacco store, if secondhand smoke from the store does not infiltrate into areas in which smoking is prohibited under this subchapter;

(5) Areas within long-term care facilities that are designated by the long-term care facilities as a smoking area or for supervised patient smoking only;

(6) Outdoor areas of places of employment;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities;

(8)(A) All restaurants and bars licensed by the State of Arkansas that prohibit at all times all persons less than twenty-one (21) years of age from entering the premises if secondhand smoke does not infiltrate into areas in which smoking is prohibited under this subchapter.

(B) All restaurants and bars that are exempt under this subdivision (8) shall prominently display a health warning sign as defined by the State Board of Health; and

(9) Designated smoking areas on the gaming floor of any franchisee of the Arkansas Racing Commission.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1806. Notice of prohibition of smoking.

(a) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment in which smoking is prohibited by this subchapter.

(b) The owner, operator, manager, or other person in control of any area in which smoking is prohibited by this subchapter shall remove all ashtrays from the area unless an ashtray is permanently affixed to an existing structure before July 21, 2006.

(c) The Department of Health may treat a violation of this section as a deficiency to be assessed against any licensee or facility over which it has statutory jurisdiction.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1807. Rules — Promulgation and enforcement authority.

(a) The State Board of Health may adopt reasonable rules and regulations that it determines are necessary or useful to carry out the purposes or facilitate enforcement of this subchapter.

(b)(1) The Department of Health and its authorized agents may enforce compliance with this subchapter and any rules and regulations adopted and promulgated under this subchapter by the board.

(2) Under rules of the board, the department and its authorized agents may enter upon and inspect the premises of any public place or enclosed area within a place of employment at any reasonable time and in a reasonable manner.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1808. Subchapter deemed cumulative.

(a) This subchapter is cumulative to and does not prohibit the enactment of any other general or local laws, rules, or regulations of state or local governing authorities or local ordinances prohibiting smoking that are more restrictive than or are in direct conflict with this subchapter.

(b) This subchapter may not be construed to permit smoking where it is otherwise restricted by other applicable laws or employer policies.

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

20-27-1809. Penalties.

Any person who violates any provision of this subchapter is guilty of a violation and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History. Acts 2006 (1st Ex. Sess.), No. 8, § 1.

Subchapter 19 — Arkansas Protection from Secondhand Smoke for Children Act of 2006

SECTION.
20-27-1901. Title.
20-27-1902. Definition.
20-27-1903. Tobacco use — Prohibitions.
20-27-1904. Penalty.

20-27-1901. Title.

This subchapter shall be known and may be cited as the "Arkansas Protection from Secondhand Smoke for Children Act of 2006".

History. Acts 2006 (1st Ex. Sess.), No. 13, § 1.

20-27-1902. Definition.

As used in this subchapter, "motor vehicle" means any motor vehicle, except a school bus, a church bus, or other public conveyance, that is required by federal or state law or regulation to be equipped with a passenger restraint system.

History. Acts 2006 (1st Ex. Sess.), No. 13, § 2.

20-27-1903. Tobacco use — Prohibitions.

Smoking is prohibited in any motor vehicle in which a child who is less than fourteen (14) years of age is a passenger.

History. Acts 2006 (1st Ex. Sess.), No. 13, § 3; 2011, No. 811, § 1.

Amendments. The 2011 amendment rewrote the section.

20-27-1904. Penalty.

(a) A person who violates this subchapter is guilty of a violation and upon conviction shall be punished by a fine not to exceed twenty-five dollars ($25.00).

(b) If a person is convicted, pleads guilty, pleads nolo contendere, or forfeits bond for violation of this subchapter, no court costs pursuant to § 16-10-305 or other costs or fees shall be assessed.

(c) Any person who proves to the court that he or she has entered into a smoking cessation program may have his or her fine eliminated for a first offense violation of this subchapter.

History. Acts 2006 (1st Ex. Sess.), No. 13, § 4.

Subchapter 20 — Breastfeeding In Public

SECTION.
20-27-2001. Breastfeeding in public.

20-27-2001. Breastfeeding in public.

A woman may breastfeed a child in a public place or any place where other individuals are present.

History. Acts 2007, No. 680, § 2.

Subchapter 21 — Arkansas Cigarette Fire Safety Standard Act

SECTION.
20-27-2101. Title.

SECTION.
20-27-2102. Purpose.

SECTION.
20-27-2103. Definitions.
20-27-2104. Test method and performance standard.
20-27-2105. Certification and product change.
20-27-2106. Marking of cigarette packaging.
20-27-2107. Penalties.
20-27-2108. Implementation.
20-27-2109. Inspection.
20-27-2110. Sale outside of Arkansas.
20-27-2111. Preemption.
20-27-2112. Local regulation.

20-27-2101. Title.

This subchapter shall be known and may be cited as the "Arkansas Cigarette Fire Safety Standard Act".

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2102. Purpose.

The purpose of this subchapter is to make the laws of this state with regard to cigarette fire safety uniform with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the January 1, 2010.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2103. Definitions.

As used in this subchapter:
(1) "Cigarette" means:
(A) A roll of tobacco wrapped in paper or in a substance not containing tobacco; or
(B) A roll of tobacco wrapped in a substance containing tobacco that because of its appearance, the type of tobacco used in the filler, or its packaging and labeling is likely to be offered to or purchased by consumers as a cigarette as defined in subdivision (1)(A) of this section;
(2) "Manufacturer" means:
(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer; or
(B) An entity that is a successor of an entity defined in subdivision (2)(A) of this section;
(3)(A) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing.
(B) A "quality control and quality assurance program" ensures that the testing repeatability remains within the required repeatabil-

ity values stated in § 20-27-2104(b)(6) for all test trials used to certify cigarettes under this subchapter;

(4) "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent (95%) of the time;

(5) "Retailer" means a person who purchases tobacco products from a licensed wholesaler for the purpose of selling them over the counter at retail to consumers;

(6)(A) "Sale" means a transfer of title or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement for sale.

(B) "Sale" includes the giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money;

(7) "Sell" means to sell or to offer to do the same; and

(8) "Wholesaler" means a person who is not a manufacturer or owned or operated by a manufacturer that does business in this state at or from an established place of business that purchases unstamped or untaxed cigarettes or other tobacco products directly from manufacturers that distribute tobacco products in Arkansas and that sells to properly licensed cigarette vendors or retailers.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2104. Test method and performance standard.

(a) Except as provided in subsection (h) of this section, cigarettes shall not be offered for sale in this state or offered for sale or sold to persons located in this state unless:

(1) The cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

(2) A written certification has been filed by the manufacturer with the Director of Arkansas Tobacco Control under § 20-27-2105; and

(3) The cigarettes have been marked in accordance with § 20-27-2106.

(b)(1) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes".

(2) Testing shall be conducted on ten (10) layers of filter paper.

(3)(A) No more than twenty-five percent (25%) of the cigarettes tested in a test trial under this section shall exhibit full-length burns.

(B) Forty (40) replicate tests shall compose a complete test trial for each cigarette tested.

(4) The performance standard required by this section shall be applied only to a complete test trial.

(5) Written certifications shall be based on testing conducted by a laboratory that has been accredited under standard ISO/IEC 17025 of

the International Organization for Standardization or other comparable accreditation standard required by the director.

(6)(A) Laboratories conducting testing under this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results.

(B) The repeatability value shall be no greater than nineteen hundredths (0.19).

(7) This section does not require additional testing if cigarettes are tested consistent with this subchapter for any other purposes.

(8) Testing performed or sponsored by the director to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

(c)(1) Each cigarette listed in a certification submitted under § 20-27-2105 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard under this section shall have at least two (2) nominally identical bands on the paper surrounding the tobacco column.

(2) At least one (1) complete band shall be located at least fifteen millimeters (15 mm) from the lighting end of the cigarette.

(3) For cigarettes on which the bands are positioned by design there shall be at least two (2) bands fully located at least fifteen millimeters (15 mm) from the lighting end and ten millimeters (10 mm) from the filter end of the tobacco column or ten millimeters (10 mm) from the labeled end of the tobacco column for nonfiltered cigarettes.

(d)(1) A manufacturer of a cigarette that the director determines cannot be tested by the test method under subdivision (b)(1) of this section shall propose a test method and performance standard for the cigarette to the director.

(2) Upon approval of the proposed test method and determination by the director that the performance standard proposed by the manufacturer is equivalent to the performance standard under subdivision (b)(3) of this section, the manufacturer may employ the test method and performance standard to certify the cigarette under § 20-27-2105.

(3) Unless the director demonstrates a reasonable basis why a proposed alternative test should not be accepted under this subchapter, the director shall authorize a manufacturer to employ an alternative test method and performance standard to certify a cigarette for sale in this state if the director:

(A) Determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this subchapter; and

(B) Finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section.

(4) All other applicable requirements of this section shall apply to the manufacturer.

(e)(1) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three (3) years and shall make copies of these reports available to the director and the Attorney General upon written request.

(2) A manufacturer who fails to make copies of these reports available within sixty (60) days of receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

(f) The director may adopt a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by a tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with American Society of Testing and Materials Standard E2187-04 and the performance standard in subdivision (b)(3) of this section.

(g)(1) The director shall review the effectiveness of this section and report every three (3) years his or her findings and recommendations to the Speaker of the House of Representatives and the President Pro Tempore of the Senate for legislation to improve the effectiveness of this subchapter.

(2) The report and legislative recommendations shall be submitted no later than June 30 following the conclusion of each three-year period.

(h) The requirement of subsections (a) and (b) of this section shall not prohibit:

(1) A wholesaler or retailer from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesaler or retailer can establish that the inventory was in its possession before January 1, 2010, and the wholesaler or retailer can establish that the inventory was purchased before January 1, 2010, in comparable quantity to the inventory purchased during the same period of the prior year; or

(2)(A) The sale of cigarettes solely for the purpose of consumer testing.

(B) For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer or under the control and direction of a manufacturer for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for assessment.

History. Acts 2009, No. 697, § 2; 2011, No. 1121, § 9.

Amendments. The 2011 amendment substituted "compose" for "comprise" in (b)(3)(B).

Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2105. Certification and product change.

(a) A manufacturer shall submit to the Director of Arkansas Tobacco Control a written certification attesting that each cigarette listed in the certification:

(1) Has been tested in accordance with § 20-27-2104; and

(2) Meets the performance standard under § 20-27-2104.

(b) A cigarette listed in the certification shall be described with the following information:

(1) Brand or trade name on the package;

(2) Style, such as light or ultra light;

(3) Length in millimeters;

(4) Circumference in millimeters;

(5) Flavor, such as menthol or chocolate, if applicable;

(6) Filter or nonfilter;

(7) Package description, such as soft pack or box;

(8) Marking under § 20-27-2106;

(9) The name, address, and telephone number of the laboratory if different than the manufacturer that conducted the test; and

(10) The date that the testing occurred.

(c) The Director of Arkansas Tobacco Control shall make the certifications available to the Attorney General and the Director of the Department of Finance and Administration for purposes consistent with this subchapter.

(d) A cigarette certified under this section shall be recertified every three (3) years.

(e)(1)(A) For each brand family of cigarettes listed for certification, a manufacturer shall pay a fee of one thousand dollars ($1,000) to the Director of Arkansas Tobacco Control.

(B) The fee shall be applied to all cigarettes within the certified brand family and shall include any new cigarette certified within the brand family during the three-year certification period.

(2) The Director of Arkansas Tobacco Control may adjust annually this fee to ensure it defrays the actual costs of processing, enforcement, and oversight activities required by this subchapter.

(f)(1) If a manufacturer has certified a cigarette under this section and subsequently makes a change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by this subchapter, the cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards under § 20-27-2104.

(2) An altered cigarette that does not meet the performance standard in § 20-27-2104 shall not be sold in this state.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2106. Marking of cigarette packaging.

(a)(1) Cigarettes that are certified by a manufacturer under § 20-27-2105 shall be marked to indicate compliance with the requirements of § 20-27-2104.

(2) The marking shall be in 8-point type or larger and consist of the letters "FSC", which signifies Fire Standard Compliant, permanently printed, stamped, engraved, or embossed on the package at or near the UPC code.

(b) A manufacturer shall use only one (1) marking and shall apply the marking uniformly for all packages, including without limitation to packs, cartons, and cases, and brands marketed by the manufacturer.

(c)(1) Manufacturers certifying cigarettes under § 20-27-2105 shall provide a copy of the certifications to all wholesalers to which they sell cigarettes.

(2) Wholesalers and retailers shall permit the Director of Arkansas Tobacco Control, the Director of the Department of Finance and Administration, the Attorney General, and their employees to inspect markings of cigarette packaging marked in accordance with this section.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2107. Penalties.

(a)(1) A manufacturer, wholesaler, or any other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of § 20-27-2104 is subject to a civil penalty in an amount not to exceed one hundred dollars ($100) for each pack of such cigarettes sold or offered for sale.

(2) The penalty against a person or entity shall not exceed one hundred thousand dollars ($100,000) during any thirty-day period.

(b)(1) A retailer that knowingly sells or offers to sell cigarettes in violation of § 20-27-2104 is subject to a civil penalty in an amount not to exceed one hundred dollars ($100) for each pack of such cigarettes sold or offered for sale.

(2) The penalty against a retailer shall not exceed twenty-five thousand dollars ($25,000) for sales or offers to sell during any thirty-day period.

(c) In addition to any penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification under § 20-27-2105 is subject to a civil penalty of at least seventy-five thousand dollars ($75,000) and not to exceed two hundred fifty thousand dollars ($250,000) for each false certification.

(d) A person who violates any other provision of this subchapter is subject to a civil penalty for a first offense in an amount not to exceed

one thousand dollars ($1,000) and for a subsequent offense in an amount not to exceed five thousand dollars ($5,000) for each violation.

(e) It is a defense in an action for civil penalties that a wholesaler, retailer, or a person in the stream of commerce relied in good faith on a manufacturer's certificate or marking that the cigarettes comply with this subchapter.

(f)(1) An authorized representative of the Director of the Department of Finance and Administration or the Director of Arkansas Tobacco Control may seize and take possession of cigarettes:

(A) For which no certification has been filed as required by § 20-27-2105; or

(B) That have not been marked as required by § 20-27-2106.

(2)(A) Cigarettes seized under this section shall be destroyed.

(B) Before the destruction of cigarettes seized under this section, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

(g)(1) In addition to any other remedy provided by law, the Attorney General may file an action in circuit court for a violation of this subchapter including petitioning:

(A) For preliminary or permanent injunctive relief against a manufacturer, importer, wholesaler, retailer, or any other person or entity to enjoin the person or entity from selling, offering to sell, or affixing tax stamps to cigarettes that do not comply with the requirements of this subchapter; or

(B) To recover costs or damages suffered by the state because of a violation of this subchapter, including enforcement costs relating to the specific violation and attorney's fees.

(2) Each violation of this subchapter or of the rules adopted under this subchapter constitutes a separate civil violation for which the Director of Arkansas Tobacco Control or Attorney General may obtain relief.

(3) Upon obtaining judgment for injunctive relief under this section, the Director of Arkansas Tobacco Control or Attorney General shall provide a copy of the judgment to all wholesalers to which the cigarettes have been sold.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2108. Implementation.

(a) The Director of Arkansas Tobacco Control may promulgate rules under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., necessary to effectuate the purposes of this subchapter.

(b)(1) The Director of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and their employees, in the regular course of conducting inspections of wholesalers and retailers, as authorized under the Arkansas Tobacco Products Tax Act of

1977, § 26-57-201 et seq., may inspect cigarettes to determine if the cigarettes are marked as required by § 20-27-2106.

(2) If the Director of the Department of Finance and Administration discovers cigarettes that are not marked as required, the Director of the Department of Finance and Administration shall notify the Director of Arkansas Tobacco Control.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2109. Inspection.

(a) To enforce the provisions of this subchapter, the Attorney General, the Director of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and their authorized representatives may examine the books, papers, invoices, and other records of a person in possession, control, or occupancy of premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises.

(b) Every person in possession, control, or occupancy of premises where cigarettes are placed, stored, sold, or offered for sale shall give the Attorney General, the Director of the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and their authorized representatives the means, facilities, and opportunity for the examinations authorized by this section.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2110. Sale outside of Arkansas.

This subchapter does not prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of § 20-27-2104 if:

(1) The cigarettes:

(A) Are or will be stamped for sale in another state; or

(B) Are packaged for sale outside the United States; and

(2) The person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this state.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2111. Preemption.

This subchapter shall be repealed if a federal reduced cigarette ignition propensity standard is adopted and becomes effective.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

20-27-2112. Local regulation.

This subchapter preempts any local law, ordinance, or regulation that conflicts with any provision of this subchapter or any policy of the state implemented in accordance with this subchapter and, notwithstanding any other provision of law, a governmental unit of this state may not enact or enforce an ordinance, local law, or regulation that conflicts with or is preempted by this subchapter.

History. Acts 2009, No. 697, § 2.
Effective Dates. Acts 2009, No. 697, § 3: Jan. 1, 2010.

Subchapter 22 — Tanning Facilities

SECTION.
20-27-2201. Definitions.
20-27-2202. Consent required.

20-27-2201. Definitions.

As used in this subchapter:

(1) "Consumer" means an individual who is provided access to a tanning facility;

(2)(A) "Operator" means an individual designated by the tanning facility owner or tanning equipment lessee to operate or to assist and instruct the consumer in the operation and use of the tanning facility or tanning equipment.

(B) However, an operator in an apartment or a condominium need not exercise direct supervision or be physically on the premises at all times;

(3) "Person" means an individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state, or political subdivision or agency of this state, and any legal successor, representative, agent, or agency of these entities;

(4) "Tanning equipment" means ultraviolet or other lamps and equipment containing these lamps intended to induce skin tanning through the irradiation of any part of the living human body with ultraviolet radiation;

(5)(A) "Tanning facility" means a location, place, area, structure, or business or a part of a location, place, area, structure, or business which provides consumers access to tanning equipment.

(B) "Tanning facility" includes without limitation regardless of whether a fee is charged for access to the tanning equipment:

(i) Apartments;

(ii) Condominiums;

(iii) Health clubs; and

(iv) Tanning salons; and

(6) "Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between two hundred nanometers (200 nm) and four hundred nanometers (400 nm).

History. Acts 2009, No. 707, § 1.

20-27-2202. Consent required.

Before allowing an initial exposure at a tanning facility of a person under eighteen (18) years of age, the owner or operator shall witness the person's parent or legal guardian signing and dating a warning statement as follows:

"WARNING STATEMENT

This statement must be read and signed by a parent or legal guardian of any person under eighteen (18) years of age before allowing the initial exposure at this tanning facility.

DANGER — ULTRAVIOLET RADIATION WARNING

Follow instructions.

Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injury and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

Wear protective eyewear. FAILURE TO USE PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

Medications or cosmetics may increase your sensitivity to the ultraviolet radiation. Consult a physician before using sunlamp or tanning equipment if you are using medications or have a history of skin problems or believe yourself to be especially sensitive to sunlight.

I have read the above warning and understand what it means before undertaking any tanning equipment exposure.

Signature of Operator of Tanning Facility or Equipment

Signature of parent or legal guardian

Print name of minor and parent or legal guardian

Date

OR

The consumer is illiterate or visually impaired, or both, and I have read the warning statement aloud and in full to the consumer in the presence of the below signed witness.

Signature of Operator of Tanning Facility or Equipment

Witness

Date"

History. Acts 2009, No. 707, § 1.

Subchapter 23 —The Arkansas Children's Imitation Firearms Act

SECTION.

20-27-2301. Definition.
20-27-2302. Sale of imitation firearms prohibited — Penalty.

A.C.R.C. Notes. Acts 2009, No. 1495, § 1, provided: "The General Assembly finds that:

"(1) When police officers, school officials, and others mistake replica weapons carried by young people as real weapons the health and safety of Arkansans is jeopardized;

"(2) Citizens, including children, are killed in Arkansas and other states when a toy gun is mistaken for a real gun, or a real gun is mistaken for a toy;

"(3) There is a real risk of an individual being shot by officers who are unable to establish the exact nature of the weapon; and

"(4) Valuable time and resources are being used up when armed response teams have to be sent to incidents involving imitation firearms."

20-27-2301. Definition.

(a) As used in this section, "imitation firearm" means a toy that is identical in appearance to an original firearm that was manufactured, designed, and produced after 1898, including only:

(1) Air-soft guns firing nonmetallic projectiles;

(2) Replica nonguns; and

(3) Water guns.

(b) "Imitation firearm" does not include:

(1) A nonfiring, collector replica of an antique firearm developed before 1898;

(2) Traditional BB, paintball, or pellet-firing air guns that expel a projectile through the force of air pressure; or

(3) A device:

(A) For which an orange solid plug or marking is permanently affixed to the muzzle end of the barrel for a depth of not more than six millimeters (6 mm);

(B) For which the entire exterior surface is predominately colored other than black, brown, blue, silver, or metallic; or

(C) That is constructed of transparent or translucent materials that permit unmistakable observation of the complete contents of the device.

History. Acts 2009, No. 1495, § 2.
Effective Dates. Acts 2009, No. 1495, § 3: Jan. 1, 2010.

20-27-2302. Sale of imitation firearms prohibited — Penalty.

(a) Except as provided under subsection (b) of this section, it is unlawful to sell or offer for sale within this state, by mail or in any other manner, an imitation firearm.

(b) A person may sell or offer for sale an imitation firearm if the device is sold solely for purposes of:

(1) Export in interstate or foreign commerce;

(2) Lawful use in a theatrical production;

(3) Use in a certified or regulated sporting event or competition;

(4) Use in a military or civil defense activity or ceremonial activity; or

(5) A public display authorized by a public or private school.

(c) A person who violates subsection (a) of this section is subject in an action brought by the city attorney or prosecuting attorney to a civil penalty of not more than one thousand dollars ($1,000) for each violation.

History. Acts 2009, No. 1495, § 2.
Effective Dates. Acts 2009, No. 1495, § 3: Jan. 1, 2010.

Subchapter 24 — Sale of Herbal Snuff to Minors

SECTION.
20-27-2401. Findings.
20-27-2402. Definitions.
20-27-2403. Prohibition on sales of herbal snuff — Penalties.
20-27-2404. Rules — Enforcement.

20-27-2401. Findings.

The General Assembly finds that:

(1) Herbal snuff is a tobaccoless snuff, available as loose composition or in pouches, that is primarily marketed as an adult alternative for moist smokeless tobacco;

(2) Herbal snuff is marketed in flavors that are similar to those of the leading moist smokeless tobacco brands;

(3) Herbal snuff is not a tobacco product and therefore is not subject to tobacco taxes, advertising restrictions, or merchandising restrictions;

(4) Even though herbal snuff is regulated by the United States Food and Drug Administration as a food product and manufacturers are required to follow Food and Drug Administration guidelines, herbal snuff is intended to be an adult-oriented product;

(5) Even though some companies have a strict and long-standing policy of not marketing to minors, children can legally purchase herbal snuff;

(6) Children should not be emulating adult smokeless tobacco consumers and should not enter into the habit of dipping snuff;

(7) Herbal snuff is used in Adult Tobacco Cessation Programs; and

(8) Herbal snuff should be marketed only to adults to avoid any possibility of herbal snuff's being regarded as a gateway product for children.

History. Acts 2011, No. 198, § 1.

20-27-2402. Definitions.

As used in this section:

(1) "Herbal chewing snuff" means a tobacco-free and nicotine-free version of chewing snuff, a product used orally by chewing the contents until juice is released and absorbed into the body;

(2) "Herbal dipping snuff" means a tobacco-free and nicotine-free version of moist snuff, a product used orally by placing either a loose or pouched form along the gum line behind the lip;

(3)(A) "Herbal snuff" means a tobaccoless chewing and snuff composition that mimics smokeless tobacco.

(B) "Herbal snuff" includes:

(i) Herbal chewing snuff;

(ii) Herbal dipping snuff; and

(iii) Herbal snus; and

(4) "Herbal snus" means a tobacco-free and nicotine-free substitute of snus, a spitless product of either loose or pouched form that is usually placed along the gum line beneath the upper lip.

History. Acts 2011, No. 198, § 1.

20-27-2403. Prohibition on sales of herbal snuff — Penalties.

(a) It is unlawful to sell or offer for sale herbal snuff in this state to persons under eighteen (18) years of age.

(b)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating this section is guilty of a violation and is subject to a fine not to exceed one hundred dollars ($100) per violation.

(2) Each violation and conviction shall be deemed a separate offense.

History. Acts 2011, No. 198, § 1.

20-27-2404. Rules — Enforcement.

(a) The Arkansas Tobacco Control Board shall adopt rules to implement this chapter.

(b)(1) The board and its authorized agents may enforce compliance with this chapter and any rules adopted under this section by the board.

(2) The board and its authorized agents may enter upon and inspect the premises of any public place at any reasonable time and in a reasonable manner.

History. Acts 2011, No. 198, § 1.

Subchapter 25 — Arkansas Lead-Based Paint-Hazard Act of 2011

SECTION.
20-27-2501. Title.
20-27-2502. Legislative intent.
20-27-2503. Definitions.
20-27-2504. Criminal, civil, and administrative penalties.
20-27-2505. Powers and duties.
20-27-2506. State Board of Health — Rules.
20-27-2507. Collection of fees.
20-27-2508. License required — Exceptions.
20-27-2509. Unlawful acts.

A.C.R.C. Notes. Acts 2011, No. 1011, § 7, provided: "Extension of license. A valid license issued by the Arkansas Department of Environmental Quality for lead-based paint hazard activities in effect upon the effective date of this subchapter shall remain in full force and effect until the effective date of applicable licensure rules promulgated by the State Board of Health."

Effective Dates. Acts 2011, No. 1011, § 8: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that lead and lead-based paint have been determined to be a human health concern posing an immediate danger to children, families, and the environment; and that this act is immediately necessary to prevent irreparable harm to children in this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

20-27-2501. Title.

This subchapter shall be known and may be cited as the "Arkansas Lead-Based Paint-Hazard Act of 2011".

History. Acts 2011, No. 1011, § 6.

20-27-2502. Legislative intent.

In the interest of public health and safety and the environment and to qualify the Department of Health to adopt, administer, and enforce a program for licensing lead-based paint activities, training programs, procedures, and requirements for the licensing and certification of individuals and firms engaged in lead-based paint activities and work

practice standards for performing such activities, the General Assembly finds that it is necessary to enact this subchapter.

History. Acts 2011, No. 1011, § 6.

20-27-2503. Definitions.

As used in this subchapter:

(1)(A) "Abatement" means any measures or set of measures that results in the permanent elimination of lead-based paint hazards.

(B) "Abatement" includes without limitation:

(i) The removal of lead-based paint and lead-contaminated dust;

(ii) The permanent enclosure or encapsulation of lead-based paint;

(iii) The replacement of lead-painted surfaces or fixtures;

(iv) The removal or covering of soil contaminated with lead from lead-based paint activities or lead-contaminated paint that has deteriorated; and

(v) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with activities listed in subdivisions (1)(B)(i)-(iv) of this section.

(C) Specifically, "abatement" includes without limitation:

(i) Projects for which there is a written contract or other documentation that provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(a) Result in the permanent elimination of lead-based paint hazards; or

(b) Are designed to permanently eliminate lead-based paint hazards and are described in subdivision (1)(B) of this section;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards conducted by licensed consultants or contractors or individuals certified under this subchapter, unless the projects are covered by subdivision (1)(D) of this section;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards conducted by licensed consultants or contractors or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless the projects are covered by subdivision (1)(D) of this section; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

(D)(i) "Abatement" does not include renovations, remodeling, landscaping, or other activities when the activities are not designed to permanently eliminate lead-based paint hazards but instead are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards.

(ii) "Abatement" also does not include interim controls, operations, and maintenance activities or other measures and activities designed to temporarily but not permanently reduce lead-based paint hazards;

(2) "Certificate" means a document issued by the Department of Health to an individual who satisfactorily completes training and examination under this subchapter and meets any other applicable requirements established by the department;

(3)(A) "Child-occupied facility" means a building or operation of a building constructed before 1978, visited regularly by the same child six (6) years of age or under on at least two (2) different days within any week, Sunday through Saturday period, if each day's visit lasts at least three (3) hours and the combined weekly visit lasts at least six (6) hours.

(B) Child-occupied facilities may include without limitation day-care centers, preschools, and kindergarten classrooms;

(4) "Consultant" means a person or other legal entity, however organized, that acts as an agent for the owner and performs lead-based paint activities and meets all other requirements established by the department;

(5) "Contractor" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities as an agent for the owner and meets all other requirements of the department;

(6) "Inspector" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to conduct inspections and meets all other requirements established by the department. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing;

(7) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter (1.0 mg/cm^2) or more than five-tenths percent (0.5%) by weight;

(8) "Lead-based paint activities" means inspection, risk assessment, and abatement of target housing and child-occupied facilities as defined in this subchapter;

(9) "Lead-based paint hazard" means a condition that causes exposure to dust or soil contaminated by lead-based paint activities or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Toxic Substances Control Act of 1976 Section 403, 15 U.S.C. § 2601 et seq.;

(10) "License" means a document issued by the department to a firm or training provider that meets all applicable requirements as established by the department;

(11) "Project designer" means an individual who plans and designs or who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to plan and design abatement projects;

(12)(A) "Risk assessor" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to conduct risk assessments and meets all other requirements established by the department.

(B) A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing;

(13) "Supervisor" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to supervise and conduct abatements and to prepare occupant protection plans and abatement reports and meets all other requirements established by the department;

(14) "Target housing" means any housing constructed before 1978, except housing for the elderly or persons with disabilities, unless any one (1) or more children six (6) years of age or under resides or is expected to reside in such housing for the elderly or persons with disabilities, or any zero-bedroom dwelling;

(15) "Training provider" means any person or other legal entity, however organized, that conducts courses for the purposes of certifying individuals for purposes of this subchapter and meets all other requirements established by the department; and

(16) "Worker" means an individual who has been trained by an accredited training program as certified by this subchapter or the United States Environmental Protection Agency to perform abatements and meets all other requirements established by the department.

History. Acts 2011, No. 1011, § 6.

20-27-2504. Criminal, civil, and administrative penalties.

A person or entity that violates this subchapter, commits any unlawful act under this subchapter, or violates any rule or order of the State Board of Health under this subchapter is subject to the penalty provisions under § 20-7-101 et seq.

History. Acts 2011, No. 1011, § 6.

20-27-2505. Powers and duties.

The Department of Health shall administer and enforce this subchapter with the powers and duties to:

(1) Require and regulate training and examinations for individuals engaged in performing lead-based paint activities under this subchapter;

(2) Establish standards and procedures for the licensing and certification of firms and individuals engaged in lead-based paint activities and training providers engaged in training individuals for certification under this subchapter;

(3) Enforce rules necessary or appropriate to the implementation of this subchapter, including without limitation taking legal action in a court of competent jurisdiction;

(4) Issue licenses and certifications to all applicants that satisfy the requirements of this subchapter and any rule adopted under this subchapter;

(5) Renew the licenses and certifications under this subchapter; and

(6) Suspend or revoke the licenses and certifications under this subchapter for cause and after notice and opportunity for a hearing.

History. Acts 2011, No. 1011, § 6.

20-27-2506. State Board of Health — Rules.

The State Board of Health shall adopt rules necessary to:

(1) Establish annual license and certification fees for firms, training providers, and individuals;

(2) Recover the costs of processing license applications and the issuance of licenses and certifications; and

(3) Establish other fees necessary to recover the costs of enforcing this subchapter.

History. Acts 2011, No. 1011, § 6.

20-27-2507. Collection of fees.

The Department of Health shall collect fees, rates, tolls, or charges for the services delivered by the department in a manner the department deems necessary to support the activities under this subchapter.

History. Acts 2011, No. 1011, § 6.

20-27-2508. License required — Exceptions.

(a) A consultant, contractor, or training provider shall obtain a license from the Department of Health to conduct lead-based paint activities before actively engaging in any lead-based paint hazard activities in this state.

(b)(1) An application for a license shall be made in the manner and form required by the department.

(2) An application for a license or renewal of a license shall be accompanied by proof of liability insurance coverage, except for training providers, in the form and amount required by the department, and proof of such training and examination as required by the department.

(c)(1) The department shall license and certify all applicants for licenses and certifications under this subchapter that satisfy the requirements of this subchapter.

(2) A license or certification under this subchapter shall be valid for a period of one (1) year.

(3) A license or certification under this subchapter shall be renewable upon application and upon satisfying the renewal requirements of the department.

(d) Except for training providers, the state and political subdivisions of the state are exempt from the license requirements of this subchapter.

History. Acts 2011, No. 1011, § 6.

20-27-2509. Unlawful acts.

It is unlawful for a person to:

(1) Conduct lead-based paint activities without having first obtained a license or certification, or both, from the Department of Health when acting as a contractor, consultant, training provider, inspector, project designer, risk assessor, supervisor, or worker;

(2) Violate this subchapter or any rule or order adopted or issued under this subchapter;

(3) Knowingly make any false statement, representation, or certification in any application, record, report, or other document filed or required to be maintained under this subchapter or rules adopted under this subchapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this subchapter or any rules adopted under this subchapter; or

(4) Participate in any lead-based paint-hazard activity contrary to the rules or orders issued under this subchapter and the rules adopted under this subchapter, whether or not the person is required to have a license under this subchapter.

History. Acts 2011, No. 1011, § 6.

Subchapter 26 — Gambling Advertisements

SECTION.
20-27-2601. Advertisements for gambling activities to include information concerning compulsive gambling disorders.

20-27-2601. Advertisements for gambling activities to include information concerning compulsive gambling disorders.

(a) As used in this section:

(1) "Gambling activity" means:

(A) Casino gambling;

(B) Horse racing;

(C) Greyhound racing;

(D) Electronic games of skill under § 23-113-103;

(E) Lotteries conducted under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq.; and

(F) Lotteries of other states advertising in the state; and

(2) "Gambling operator" means the operator of a gambling activity.

(b) Except as provided in subdivisions (g)(1)(A) and (g)(2) of this section, an advertisement by a gambling operator for a gambling activity published or broadcast in this state shall include a toll-free helpline telephone number providing information and referral services concerning compulsive gambling disorders.

(c)(1) In all printed, written, graphic, or Internet advertising, the toll-free helpline telephone number required under this section shall be displayed in a manner that is clear, identifiable, and conspicuous, but the number shall not be displayed in a size smaller than provided in subdivision (c)(2) of this section.

(2)(A) Except as provided in subdivision (g)(1)(A) of this section, in outdoor advertising by a gambling operator for a gambling activity, the toll-free helpline telephone number required under this section shall be displayed in not less than 36-point type print and not more than 50-point type print.

(B) In all other printed, written, graphic, or Internet advertising by a gambling operator for a gambling activity, the toll-free helpline telephone number required under this section shall not be displayed in less than 8-point type print.

(d) In all television advertising, the toll-free helpline telephone number required under this section shall:

(1) Be clearly and conspicuously displayed; and

(2) Remain on the screen for at least three (3) seconds.

(e) Except as provided in subdivision (g)(2) of this section, in all radio advertising, the toll-free helpline telephone number required under this section shall be stated in a manner that is clear and understandable.

(f) If a gambling operator operates an Internet website that provides information about or access to a gambling activity, the toll-free telephone number required under this section shall be displayed on the Internet website in a manner that is clear, identifiable, and conspicuous, but the number shall not be displayed in less than 8-point type print.

(g)(1)(A) This section does not apply to a billboard leased to a gambling operator as of July 27, 2011.

(B) This section applies to a billboard leased to a gambling operator if the lease was executed by the gambling operator after July 27, 2011.

(2) This section does not apply to a radio advertisement fifteen (15) seconds or less in length.

History. Acts 2011, No. 1179, § 1.

CHAPTER 28

PUBLIC WATER SYSTEM SERVICE ACT

SECTION.
20-28-104. Fees — Exceptions.
20-28-105. Payment of fees.

20-28-104. Fees — Exceptions.

(a) The Department of Health may collect the following fees from each public water system for service, other than plan reviews, provided by the public water system supervision program:

(1)(A) For a community public water system and a nontransient noncommunity water system, not more than thirty cents (30¢) per service connection per month.

(B)(i) The number of service connections for a community public water system not serving discrete service connections shall be calculated by dividing the population served by two and one-half (2½).

(ii) The number of service connections for a nontransient noncommunity water system shall be calculated by dividing the population served by two and one-half (2½).

(C) The minimum fee charged to a community public water system or a nontransient noncommunity water system is two hundred fifty dollars ($250) per year; and

(2) For a noncommunity public water system, one hundred twenty-five dollars ($125) per year.

(b) The number of service connections or population served shall be taken from the department's public water system inventory at the time of billing.

(c)(1) A new water system shall not be assessed a fee for services until water is supplied to the first connection.

(2) Each state-owned noncommunity public water system is exempt from the fee provisions of this chapter.

(d) The fees shall be established by the State Board of Health to assure implementation of this chapter.

History. Acts 1987, No. 95, § 3; 1991, No. 1053, § 1; 1993, No. 903, § 1; 2007, No. 292, § 1; 2009, No. 952, § 7.

Amendments. The 2007 amendment, in (a), substituted "thirty cents (30¢)" for "twenty-five cents (25¢)" in (1), substituted "One hundred twenty-five dollars ($125)" for "One hundred dollars ($100)" in (2), and substituted "two hundred fifty dollars ($250)" for "two hundred dollars ($200)" in (3).

The 2009 amendment rewrote (a); and made minor stylistic changes in (c) and (d).

20-28-105. Payment of fees.

(a) All fees payable under this chapter shall be due according to the following schedule and shall be payable to the Department of Health:

(1) Annual fees of one thousand dollars ($1,000) and less shall be payable in a single payment due on January 1 of each year;

(2) Annual fees greater than one thousand dollars ($1,000) and less than five thousand dollars ($5,000) shall be payable in quarterly payments, with the payments due on October 1, January 1, April 1, and July 1 of each year;

(3) Annual fees of five thousand dollars ($5,000) and greater shall be payable in monthly payments, with the first payment due on August 1 of each year. Successive payments shall be due on the first day of each month.

(b) All water systems issuing regular water bills for water service may recover the cost of the fees stated in § 20-28-104 by one (1) of the following methods:

(1) Assessing a direct charge on each bill of not more than thirty cents (30¢) per month per service connection; or

(2)(A) Apportioning the total amount of the annual fee charged to the water system among its customers in any manner that the water system determines to be more equitable.

(B) However, no charge in excess of thirty cents (30¢) per month per service shall be charged for any service through which water is provided to another community public water system.

(c) The charge shall be labeled, "FEE FOR FEDERAL SAFE DRINKING WATER ACT COMPLIANCE", and shall not be considered as a part of the water rates of the respective water systems. The fee shall be established by the State Board of Health to assure implementation of this chapter.

History. Acts 1987, No. 95, § 4; 1991, No. 1053, § 1; 1993, No. 903, § 1; 2007, No. 292, § 2.

Amendments. The 2007 amendment, in (b), substituted "thirty cents (30¢)" for "twenty-five cents (25¢)" in (1), divided (2) into (A) and (B), and substituted "thirty cents (30¢)" for "twenty-five cents (25¢)" in (2)(B).

CHAPTER 29

ARKANSAS MANUFACTURED HOME RECOVERY ACT

SECTION.

20-29-104. Assessments.

20-29-104. Assessments.

(a) The Arkansas Manufactured Home Commission shall collect assessment fees from manufacturers of manufactured homes in this state, manufacturers of manufactured homes in other states selling manufactured homes in this state, and installers and retailers.

(b) The commission shall collect the following assessment fees at the time of submission of initial certification or licensure applications:

(1) Installer ..... $2,500.00 per location

(2) Retailer ..... 5,000.00 per location

(3) Manufacturer ..... 10,000.00 per location

(c)(1) If the balance of the Manufactured Housing Recovery Fund falls below two hundred fifty thousand dollars ($250,000), then the commission may collect an annual assessment from each manufacturer of manufactured homes in this state, manufacturers of manufactured homes in other states selling manufactured homes in this state, and installers and retailers, and the annual assessment shall continue until such time as the fund is restored to a minimum level of two hundred fifty thousand dollars ($250,000).

(2) The annual assessments collected shall not exceed the following:

(A) Installer ..... $500.00 per location

(B) Retailer ..... 1,000.00 per location

(C) Manufacturer ..... 3,000.00 per location

(3) The assessments shall be collected within thirty-days' notice to all certified manufacturers, retailers, and licensed installers.

(d)(1) Any participant may receive a refund of its initial assessment after a two-year waiting period after it ceases operation of its business in this state if there are no claims pending against the participant, provided that:

(A) The participant shall notify the commission by certified mail within forty-five (45) days after the two-year waiting period and request the refund or the assessment fee shall be forfeited; and

(B) The two-year waiting period shall begin on the participant's next certification or licensing anniversary date after the participant ceases operation of its business in this state.

(2) If the participant fails to satisfy the provisions found in subdivisions (d)(1)(A) and (B) of this section, the assessment fee shall remain in the fund.

(3) No interest shall accrue to the benefit of the participant.

History. Acts 1987, No. 346, §§ 3, 4; 1991, No. 373, § 1; 2001, No. 1263, § 1.

Publisher's Notes. This section is being set out to reflect a correction in (d)(1)(A).

CHAPTER 31

ARKANSAS ELECTRICAL CODE AUTHORITY ACT

SECTION.

20-31-103. Exemptions.

20-31-103. Exemptions.

(a) The following types of construction and structures shall be exempted from this chapter:

(1) Any construction, installation, maintenance, repair, or renovation by a public utility regulated by the Arkansas Public Service Commission, by a rural electric association or cooperative, or by a municipal utility, of any transmission or distribution lines or facilities incidental to their business and covered under other nationally recognized safety standards;

(2) Any construction, installation, maintenance, repair, or renovation of any nonresidential farm building or structure; and

(3) Any construction or manufacture of manufactured homes covered by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq.

(b) The exemption from compliance with the standards promulgated in this section shall not be referred to in any way, and it shall not be any evidence of the lack of negligence or the exercise of due care by a party at a trial of any civil action to recover damages by any party.

(c) The licensing requirements of this chapter do not apply to an owner that performs electrical work or the construction, maintenance, or installation of electrical facilities upon the existing primary residence of the owner or a primary residence of the owner that is under construction.

History. Acts 1991, No. 653, § 4; 2007, No. 993, § 1.

Amendments. The 2007 amendment deleted former (a)(4) and made related changes; and added (c).

CHAPTER 33

ELDER CARE

SUBCHAPTER.

2. Criminal Records Checks for Persons Caring for the Elderly.

Subchapter 2 — Criminal Records Checks for Persons Caring for the Elderly

SECTION.

20-33-201 — 20-33-212. [Repealed.]

20-33-213. Criminal history and registry records checks required.

20-33-201 — 20-33-212. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2009, No. 762, § 5. The subchapter was derived from the following sources:

20-33-201. Acts 1997, No. 990, § 1; 1999, No. 1409, § 1; 1999, No. 1467, § 1.

20-33-202. Acts 1997, No. 990, § 2.

20-33-203. Acts 1997, No. 990, § 3; 1999, No. 1409, § 2; 1999, No. 1467, § 2; 2001, No. 1710, § 1.

20-33-204. Acts 1997, No. 990, § 4.

20-33-205. Acts 1997, No. 990, § 5; 1999, No. 1409, §§ 3-5; 2001, No. 1710, § 2; 2003, No. 1087, § 19; 2003, No. 1382, § 1; 2003, No. 1473, § 40; 2005, No. 1923, § 6; 2005, No. 1994, § 488; 2007, No. 827, § 168.

20-33-206. Acts 1997, No. 990, § 6.

20-33-207. Acts 1997, No. 990, § 7.

20-33-208. Acts 1997, No. 990, § 8; 1999, No. 1409, § 6.

20-33-209. Acts 1997, No. 990, § 9; 1999, No. 1409, § 7.

20-33-210. Acts 1997, No. 990, § 10.

20-33-211. Acts 1997, No. 990, § 11; 1999, No. 1122, § 5; 2001, No. 1710, § 3.

20-33-212. Acts 1997, No. 990, § 12; 1999, No. 1409, § 8.

Effective Dates. Acts 2009, No. 762, § 12, provided: "This act shall be effective September 1, 2009."

20-33-213. Criminal history and registry records checks required.

(a) As used in this section:

(1) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure or certification as a service provider or employment with a service provider to provide care as defined in § 20-38-101; and

(2) "Service provider" means any of the following:

(A) An ElderChoices provider certified by the Division of Aging and Adult Services of the Department of Human Services;

(B) A home health care service as defined by § 20-10-801;

(C) A hospice program as defined by § 20-7-117; or

(D) A long-term care facility as defined by § 20-10-702.

(b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) A person who was offered employment by a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-33-201 — 20-33-212 [repealed], and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under § 20-33-201 — 20-33-212 [repealed].

(B) When the person next undergoes a periodic criminal history records check, the person's continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider prior to September 1, 2009, was subject to a criminal history records check under § 20-33-201 — 20-33-212 [repealed], and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under § 20-33-201 — 20-33-212 [repealed].

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The division shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or certification of a service provider;

(2) An applicant for employment with a service provider; and

(3) An employee of a service provider.

History. Acts 2009, No. 762, § 6; 2011, No. 1121, § 10.

Effective Dates. Acts 2009, No. 762, § 12, provided: "This act shall be effective September 1, 2009."

Amendments. The 2011 amendment substituted "§ 20-38-101 et seq." for "§ 20-33-201 et seq." in (b).

CHAPTER 37

LEGISLATIVE HEALTH ADEQUACY COMMITTEE

SECTION.

20-37-105. Expiration.

20-37-105. Expiration.

The Legislative Health Adequacy Committee shall expire on December 31, 2009.

History. Acts 2003, No. 1816, § 1; 2005, No. 2261, § 1; 2007, No. 456, § 1.

Amendments. The 2007 amendment substituted "2009" for "2007."

CHAPTER 38

CRIMINAL BACKGROUND CHECKS

SECTION.

20-38-101. Definitions.
20-38-102. Criminal history records checks — Operators.
20-38-103. Criminal history records checks — Applicants and employees of service providers.
20-38-104. Request for records check — Requirement.
20-38-105. Disqualification from employment — Denial or revocation — Penalties.
20-38-106. Evidence of records checks.
20-38-107. Remedies for failure to comply.
20-38-108. Duties of Identification Bureau.
20-38-109. Regulations.
20-38-110. Confidentiality.
20-38-111. Immunity.
20-38-112. Exclusions — Licensed professionals — Completion of criminal history records check.

20-38-101. Definitions.

As used in this chapter:

(1) "Care" means treatment, services, assistance, education, training, instruction, or supervision for which the service provider is compensated either directly or indirectly;

(2) "Determination" means the determination made by the licensing or certifying agency that a service provider, operator, applicant for employment with, or employee of a service provider is or is not

disqualified from licensure, exemption from licensure, certification, any other operating authority, or employment based on the criminal history of the service provider, operator, applicant, or employee;

(3)(A) "Employee" means any person who:

(i) Has unsupervised access to clients of a service provider except as provided in subdivision (3)(B) of this section; and

(ii)*(a)* Provides care to clients of a service provider on behalf of, under the supervision of, or by arrangement with the service provider;

(b) Is employed by a service provider to provide care to clients of the service provider;

(c) Is a temporary employee placed by an employment agency with a service provider to provide care to clients of the service provider; or

(d) Resides in an alternative living home in which services are provided to individuals with developmental disabilities.

(B) "Employee" does not include a person who:

(i) Is a family member of a client receiving care from a service provider;

(ii) Is a volunteer; or

(iii) Works in an administrative capacity and does not have unsupervised access to clients of a service provider;

(4) "Licensing or certifying agency" means the state agency charged with licensing, exempting from licensure, certifying, or granting other operating authority to a service provider;

(5) "National criminal history records check" means a review of criminal history records maintained by the Federal Bureau of Investigation based on fingerprint identification or other positive identification methods;

(6) "Operator" means the person signing the application of a service provider for licensure, exemption from licensure, certification, or any other operating authority;

(7) "Registry records check" means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person's suitability for licensure, certification, exemption from licensure, or any other operating authority to be a service provider or for employment with a service provider to provide care;

(8) "Report" means a statement of the criminal history of a service provider, operator, applicant for employment with, or employee of a service provider issued by the Identification Bureau of the Department of Arkansas State Police;

(9) "Service provider" means any of the following:

(A) An Alternative Community Services Waiver Program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;

(B) A child care facility as defined by § 20-78-202;

(C) A church-exempt child care facility as recognized under § 20-78-209;

(D) An early intervention program provider certified by the Division of Developmental Disabilities Services of the Department of Human Services;

(E) An ElderChoices provider certified by the Division of Aging and Adult Services of the Department of Human Services;

(F) A home health care service under § 20-10-801;

(G) A hospice program under § 20-7-117;

(H) A long-term care facility as defined by § 20-10-702; or

(I) A nonprofit community program as defined by § 20-48-101; and

(10) "State criminal history records check" means a review of state criminal history records conducted by the Identification Bureau.

History. Acts 2009, No. 762, § 4; 2011, No. 1121, § 11.

Amendments. The 2011 amendment added the introductory language to the section.

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-102. Criminal history records checks — Operators.

(a)(1)(A) When an operator applies for a license, exemption from licensure, certificate, or other operating authority for a service provider from its licensing or certifying agency, the operator shall submit a criminal history records check form and a complete set of fingerprints to the Identification Bureau of the Department of Arkansas State Police and request a state criminal history records check and a national criminal history records check on the operator.

(B) The operator shall attach evidence of the request for a criminal history records check to the application for the service provider's license, exemption from licensure, certificate, or other operating authority.

(2)(A) The bureau shall conduct a state criminal records history check and request a national criminal history records check on the operator.

(B) Upon completion of each criminal history records check, the bureau shall issue a report to the licensing or certifying agency.

(3) Based on the criminal history records check, the licensing or certifying agency shall determine whether the operator is or is not disqualified from licensure, exemption from licensure, certification, or other operating authority.

(4) The licensing or certifying agency shall forward its determination to the operator and the service provider seeking licensure, exemption from licensure, certification, or other operating authority.

(b) Operators are required to undergo periodic criminal history records checks no less than one (1) time every five (5) years.

History. Acts 2009, No. 762, § 4.

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-103. Criminal history records checks — Applicants and employees of service providers.

(a)(1) Before making an offer of employment, a service provider shall inform an applicant that employment is contingent on the satisfactory results of criminal history records checks.

(2) If a service provider intends to make an offer of employment to an applicant, the service provider shall conduct criminal history records checks on the applicant under this section.

(3) If the service provider can verify that the applicant has lived continuously in the state for the past five (5) years, the service provider shall require the applicant to submit a criminal history records check form and shall:

(A) Initiate a state criminal history records check on the applicant with the Identification Bureau of the Department of Arkansas State Police; and

(B) Conduct a registry check on the applicant in accordance with the rules of the appropriate licensing or certifying agency.

(4) If the service provider cannot verify that the applicant has lived continuously in the state for the past five (5) years, the service provider shall require the applicant to submit a criminal history records check form and a complete set of fingerprints and shall:

(A) Initiate a state criminal history records check on the applicant with the Identification Bureau;

(B) Forward the applicant's fingerprints to the Identification Bureau to initiate a national criminal history records check on the applicant; and

(C) Conduct a registry check on the applicant in accordance with the rules of the appropriate licensing or certifying agency.

(b) After a service provider satisfies the regulatory requirements of the appropriate licensing or certifying agency governing registry checks of applicants for employment, the service provider may conditionally employ an applicant pending receipt of a determination from the appropriate licensing or certifying agency.

(c) If a service provider uses temporary employees to provide care, the service provider shall:

(1) Use a contract to detail the requirements for placing temporary employees with the service provider; and

(2) Ensure that the contract pertaining to the service provider's use of temporary employees requires the entity providing the temporary employees to comply with the following terms:

(A) The entity is responsible for conducting a criminal history records check on each temporary employee under this subchapter before the placement of the temporary employee with the service provider; and

(B) The entity shall maintain all documentation regarding criminal history records checks for each temporary employee placed with a service provider and shall provide copies of the documentation to

the service provider, which shall be made available to the appropriate licensing or certifying agency upon request.

(d) A service provider shall inform employees that continued employment is contingent on the satisfactory results of criminal history records checks and shall conduct periodic criminal history records checks on all employees no less than one (1) time every five (5) years.

(e)(1)(A) When a service provider initiates a request for a state criminal history records check on an applicant for employment with or an employee of the service provider, the Identification Bureau shall issue within twenty-four (24) hours an electronic report to the service provider and the licensing or certifying agency.

(B) When a service provider initiates a request for a national criminal history records check on an applicant for employment with or an employee of the service provider, the Identification Bureau shall issue a report to the licensing or certifying agency within ten (10) days after receipt of the results of the national criminal history records check from the Federal Bureau of Investigation.

(2) After receipt of a report from the Identification Bureau, the licensing or certifying agency shall determine whether the applicant or employee is disqualified from employment with the service provider based on the criminal history of the applicant or employee and shall forward its determination to the service provider.

(3)(A) If the licensing or certifying agency determines that an applicant or employee is disqualified from employment based on the criminal history of the applicant or employee, the service provider shall deny employment to the applicant or shall terminate the employment of the employee.

(B) If the licensing or certifying agency issues a determination that an applicant or employee is not disqualified from employment or if there is no criminal history on an applicant or employee, the service provider may employ the applicant or continue the employment of the employee.

(f)(1) If the subject of a criminal history records check has been offered employment with a child care facility or a church-exempt child care facility, the subject of a criminal history records check shall not be assessed a fee for the statewide criminal records check required under this section.

(2) The subject of a criminal history records check shall be responsible for the payment of any fee associated with the nationwide criminal records check.

(g) A person may challenge the completeness or accuracy of his or her criminal history information under § 12-12-1013.

History. Acts 2009, No. 762, § 4.
Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-104. Request for records check — Requirement.

(a) A request for a state criminal history records check on a person shall include a completed statement that:

(1) Contains the name, address, and date of birth appearing on a valid identification document issued by a government entity to the person who is the subject of the check;

(2) Indicates whether the person has been found guilty of or pleaded guilty or nolo contendere to a crime and, if so, includes a description of the crime and the particulars of the finding of guilt or the plea;

(3) Notifies the person that a service provider may conduct national criminal history records checks, state criminal history records checks, and registry records checks on the person;

(4) Provides the consent of the person who is the subject of the check to disclosure of checks, reports, and determinations under this subchapter;

(5) Informs the person how to object to the content of reports; and

(6) Contains the notarized signature of the person who is the subject of the check.

(b)(1) A request for a national criminal history records check on a person shall conform to applicable federal standards and shall include a complete set of fingerprints.

(2) The Identification Bureau of the Department of Arkansas State Police may maintain fingerprints submitted for a national criminal history records check in an automated fingerprint identification system.

History. Acts 2009, No. 762, § 4.
Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-105. Disqualification from employment — Denial or revocation — Penalties.

(a)(1) Except as provided in subsection (d) of this section, the licensing or certifying agency shall issue a determination that a person is disqualified as a service provider, operator, or from employment with a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(2) Except as provided in subsection (d) of this section, a service provider shall not knowingly employ a person and the licensing or certifying agency shall not knowingly contract with, license, exempt from licensure, certify, or otherwise authorize a person to be a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(b) As used in this section, the following criminal offenses apply to this section whether or not the record of the offense is expunged, pardoned, or otherwise sealed:

(1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401, to commit any of the offenses in this subsection;

(2) Capital murder, § 5-10-101;

(3) Murder, §§ 5-10-102 and 5-10-103;

(4) Manslaughter, § 5-10-104;

(5) Negligent homicide, § 5-10-105;

(6) Kidnapping, § 5-11-102;

(7) False imprisonment, §§ 5-11-103 and 5-11-104;

(8) Permanent detention or restraint, § 5-11-106;

(9) Robbery, §§ 5-12-102 and 5-12-103;

(10) Battery, §§ 5-13-201 — 5-13-203;

(11) Assault, §§ 5-13-204 — 5-13-207;

(12) Coercion, § 5-13-208;

(13) Introduction of controlled substance into body of another person, § 5-13-210;

(14) Terroristic threatening, § 5-13-301;

(15) Terroristic act, § 5-13-310;

(16) Any sexual offense, § 5-14-101 et seq.;

(17) Voyeurism, § 5-16-102;

(18) Death threats concerning a school employee or student, § 5-17-101;

(19) Incest, § 5-26-202;

(20) Domestic battery, § 5-26-303 — § 5-26-306;

(21) Interference with visitation, § 5-26-501;

(22) Interference with court-ordered custody, § 5-26-502;

(23) Endangering the welfare of an incompetent person, §§ 5-27-201 and 5-27-202;

(24) Endangering the welfare of a minor, §§ 5-27-205 and 5-27-206;

(25) Contributing to the delinquency of a minor, § 5-27-209;

(26) Contributing to the delinquency of a juvenile, § 5-27-220;

(27) Permitting abuse of a minor, § 5-27-221;

(28) Soliciting money or property from incompetents, § 5-27-229;

(29) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;

(30) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(31) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(32) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;

(33) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(34) Computer crimes against minors, § 5-27-601 et seq.;
(35) Felony abuse of an endangered or impaired person, § 5-28-103;
(36) Theft of property, § 5-36-103;
(37) Theft of services, § 5-36-104;
(38) Theft by receiving, § 5-36-106;
(39) Forgery, § 5-37-201;
(40) Criminal impersonation, § 5-37-208;
(41) Financial identity fraud, § 5-37-227;
(42) Arson, § 5-38-301;
(43) Burglary, § 5-39-201;
(44) Breaking or entering, § 5-39-202;
(45) Resisting arrest, § 5-54-103;
(46) Felony interference with a law enforcement officer, § 5-54-104;
(47) Cruelty to animals, §§ 5-62-103 and 5-62-104;
(48) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-508;
(49) Public display of obscenity, § 5-68-205;
(50) Promoting obscene materials, § 5-68-303;
(51) Promoting obscene performance, § 5-68-304;
(52) Obscene performance at a live public show, § 5-68-305;
(53) Prostitution, § 5-70-102;
(54) Patronizing a prostitute, § 5-70-103;
(55) Promotion of prostitution, §§ 5-70-104 — 5-70-106;
(56) Stalking, § 5-71-229;
(57) Criminal use of a prohibited weapon, § 5-73-104;
(58) Simultaneous possession of drugs and firearms, § 5-74-106; and
(59) Unlawful discharge of a firearm from a vehicle, § 5-74-107.

(c)(1) The provisions of this subsection (c) shall not be waived by the licensing or certifying agency.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, a conviction or plea of guilty or nolo contendere for any of the offenses listed in this subsection (c), whether or not the record of the offense is expunged, pardoned, or otherwise sealed, shall result in permanent disqualification from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider and is not subject to subsection (d) of this section:

(A) Any of the following offenses by any court in the State of Arkansas:

(i) Capital murder, § 5-10-101;
(ii) Murder in the first degree, § 5-10-102;
(iii) Murder in the second degree, § 5-10-103;
(iv) Kidnapping, § 5-11-102;
(v) Rape, § 5-14-103;
(vi) Sexual assault in the first degree, § 5-14-124;
(vii) Sexual assault in the second degree, § 5-14-125;
(viii) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;

(ix) Abuse of an endangered or impaired person, § 5-28-103, if it is a felony; and

(x) Arson, § 5-38-301;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(3) For purposes of licensure as a child care facility, exemption from licensure as a church-exempt child care facility, or employment with a child care facility or church-exempt child care facility, a conviction or plea of guilty or nolo contendere for any offense that involves violence or a sexual act, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, may result in permanent disqualification from licensure as a child care facility, exemption from licensure as a church-exempt child care facility, or employment with a child care facility or church-exempt child care facility and may not be subject to subsection (d) of this section.

(d)(1) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a misdemeanor offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least five (5) years from the date of the request for the criminal history records check; and

(C) The person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the background check request.

(2) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a felony offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least ten (10) years from the date of the background check request; and

(C) The individual has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the ten-year period preceding the request for a criminal history records.

(e) A person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor offense not listed in subsection (b) of this section, a similar misdemeanor offense in another state, or a similar federal misdemeanor offense.

(f) Even if the person would otherwise be disqualified under this section, a person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person:

(1) Was not disqualified on August 31, 2009; and

(2) Since August 31, 2009, has not been found guilty of or pleaded guilty or nolo contendere to:

(A) An offense listed in subsection (b) of this section;

(B) A similar offense in another state; or

(C) A similar federal offense.

History. Acts 2009, No. 762, § 4; 2011, No. 516, §§ 1–3.

Amendments. The 2011 amendment inserted "whether or not the record of the offense is expunged, pardoned, or otherwise sealed" in the introductory paragraph of (b); inserted "to commit any of the offenses in this subsection" in (b)(1); substituted "§§ 5-11-103 and 5-11-104" for "in the first degree, § 5-11-103" in (b)(7); substituted "§§ 5-13-201 — 5-13-203" for "§§ 5-13-201 and 5-13-202" in (b)(10); substituted "§§ 5-13-204 — 5-13-207" for "§§ 5-13-204 and 5-13-206" in (b)(11); substituted "§§ 5-62-103 and 5-62-104" for "§ 5-62-101" in (b)(47); deleted former (d)(1)(D) and former (d)(2)(D); and added (f).

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-106. Evidence of records checks.

A service provider shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, or the licensing or certifying agency evidence that criminal history records checks have been completed on all operators, applicants for employment, and employees of the service provider.

History. Acts 2009, No. 762, § 4.

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-107. Remedies for failure to comply.

The licensing or certifying agency shall establish remedies for failure to comply with this subchapter to be imposed on a service provider licensed, exempted from licensure, certified, or otherwise authorized to operate by its licensing or certifying agency.

History. Acts 2009, No. 762, § 4.

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-108. Duties of Identification Bureau.

(a) The Identification Bureau of the Department of Arkansas State Police shall make reasonable efforts to respond immediately to requests for state criminal history checks and to respond to requests for national criminal history checks within ten (10) calendar days after the receipt of a national criminal history check from the Federal Bureau of Investigation.

(b) Upon completion of a criminal records check, the Identification Bureau shall forward all information obtained concerning the applicant or employee to the Arkansas Crime Information Center.

History. Acts 2009, No. 762, § 4.
Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-109. Regulations.

The Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, and the licensing or certifying agency shall cooperate to prepare forms and promulgate consistent rules as necessary to implement this subchapter.

History. Acts 2009, No. 762, § 4.
Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-110. Confidentiality.

(a) All reports obtained under this subchapter are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, the licensing or certifying agency, the service provider, and the person who is the subject of the report.

(b) The information contained in reports shall not be released or otherwise disclosed to any other person or agency except by court order and is specifically exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., except to the licensing or certifying agency and the service provider.

History. Acts 2009, No. 762, § 4.
Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-111. Immunity.

The Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, the licensing or certifying agency, and the service provider are immune from suit or liability for damages for acts or omissions other than malicious acts or omissions occurring in the performance of duties imposed by this subchapter.

History. Acts 2009, No. 762, § 4.
Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-38-112. Exclusions — Licensed professionals — Completion of criminal history records check.

(a) Except for employees of licensed child care facilities or church-operated exempt child care facilities, this subchapter does not apply to a person who provides care to clients of a service provider subject to a professional license issued under:

(1) § 17-27-101 et seq., regarding licensed professional counselors;

(2) § 17-82-101 et seq., regarding dentists;

(3) § 17-87-101 et seq., regarding nurses;
(4) § 17-88-101 et seq., regarding occupational therapists;
(5) § 17-92-101 et seq., regarding pharmacists;
(6) § 17-93-101 et seq., regarding physical therapists;
(7) § 17-95-201 et seq., regarding physicians and surgeons;
(8) § 17-96-101 et seq., regarding podiatrists;
(9) § 17-97-101 et seq., regarding psychologists and psychological examiners;
(10) § 17-100-101 et seq., regarding speech-language pathologists and audiologists; or
(11) § 17-103-101 et seq., regarding social workers.

(b)(1) "Professional license" shall not include certification.

(2) "Certified persons" includes certified nursing assistants and certified home health aides.

(c) If the service provider can verify that the applicant has maintained employment in the State of Arkansas for the past twelve (12) months and has successfully completed a criminal history records check within the past twelve (12) months, the service provider is not required to conduct a criminal history records check on the applicant.

(d) If a service provider can verify that an applicant or employee has been the subject of an employment determination described in subsection (e) of this section, the service provider is not required to conduct any further criminal history records check on the applicant or employee to determine eligibility for employment except as required under § 20-38-103(d) for continued employment.

(e)(1) An employment determination and the criminal history records check used to make the determination for an applicant or employee of a service provider shall be fully acceptable and transferrable upon request between the following divisions and offices of the Department of Human Services:

(A) The Division of Child Care and Early Childhood Education for a child care facility or church-exempt child care facility;

(B) The Division of Developmental Disabilities Services for an Alternative Community Services Waiver Program provider, an early intervention provider, or a nonprofit community program; and

(C) The Office of Long-Term Care for a long-term care facility licensed as an intermediate care facility for the mentally retarded or developmentally disabled.

(2) The divisions and office listed in subdivision (e)(1) of this section shall accept from any other division or office listed in subdivision (e)(1) of this section an employment determination and the criminal history records check used to make the determination for an applicant or employee of a service provider in each instance that the following conditions are met:

(A) The employee is or applicant will be continuously employed by the service provider in one (1) or more of the service provider types described in subdivision (e)(1) of this section;

(B) The applicable service provider types in which an employee is employed or an applicant will be employed are operated and administered by the same service provider;

(C) The service provider maintains evidence acceptable to the licensing or certifying agency that the service provider types for which employment determinations and criminal records checks are accepted under subsection (e) of this section are operated and administered by the same service provider; and

(D) The service provider maintains an original or copy of the determination letter for each employee at the service provider type for which employment determinations and criminal records checks are accepted under subsection (e) of this section and at which the employee who is the subject of the determination letter is employed.

History. Acts 2009, No. 762, § 4; 2011, No. 516, § 4.

Amendments. The 2011 amendment added (d) and (e).

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.